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REPORT
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TRADE REMEDIES REFORM ACT OF 1984

MAY 1, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 4784]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 4784) to reform the remedies available to United States producers regarding unfair import competition, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are shown in the reported bill, with the matter proposed to be stricken shown in linetype and the matter proposed to be inserted shown in italic type.

BACKGROUND AND PURPOSE

OVERVIEW

H.R. 4784, the "Trade Remedies Reform Act of 1984," as amended and ordered reported by the Committee on Ways and Means, contains comprehensive amendments to Title VII of the Tariff Act of 1930 (as amended by the Trade Agreements Act of 1979). Title VII sets forth the basic definitions, terms, and procedures for imposing countervailing and antidumping duties, which represent the fundamental remedies for U.S. industries against injurious foreign

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subsidization or dumping. These laws are administered by the Department of Commerce as the "administering authority" for determining the existence of subsidies and dumping, and by the U.S. International Trade Commission (ITC) for determining whether a U.S industry is materially injured or threatened with material injury by reason of imports which are subsidized or sold at less than fair value.

H.R. 4748 strengthens and improves Title VII in several important respects. First, it clarifies and expands the scope of these laws to cover newer forms of unfair trade practices, such as foreign industrial targeting, upstream subsidies, natural resource subsidies, and downstream dumping. Second, it provides several needed definitions and guidelines to govern the agencies responsible for administering these laws on such issues as threat of injury, cumulation of imports, and coverage of likely sales or leases. Third, H.R. 4784 limits present discretion to terminate or suspend investigations on the basis of settlement agreements, including quantitative import restrictions, rather than imposing offsetting duties and encouraging elimination of the unfair practice. Fourth, the bill mandates several significant procedural changes that will lower legal costs, simplify investigations for all parties, and greatly reduce the burdens on the agencies administering these laws. Fifth, it establishes a centralized Trade Remedy Assistance Office in the International Trade Commission to assist industries in understanding and utilizing the many trade remedies available under U.S. law. It also mandates greater assistance to qualifying small business in preparing and filing trade remedy petitions. Sixth, it creates a Targeting Subsidy Monitoring Program in the ITC so that the government will engage in a comprehensive and coordinated effort of monitoring and analyzing the industrial policies of our trading partners that may involve export targeting.

NEED TO IMPROVE EXISTING LAW

Together, these changes strengthen and streamline the basic regime in U.S. law governing injurious unfair trade practices. The countervailing duty and antidumping laws are vital to the maintenance of fair trade, because they offset and deter the use of predatory dumping and subsidization in the U.S. market by foreign governments or exporters. However, during its extensive hearing review of the operation of the various trade remedy statutes during the spring of 1983 (see Committee on Ways and Means Serials 98–14 and 98–15), the Subcommittee on Trade was made aware of the widespread attitude throughout American industry that the antidumping and countervailing duty laws need various improvements to make them more effective in deterring the injurious practices they were intended to address. Principal criticisms center around the inadequate coverage of emerging and more subtle practices such as targeting, and the enormous costs and procedural delays associated with these laws.

Targeting

A major concern of many industries is the issue of foreign industrial targeting and its coverage under present law. Many foreign

governments are actively targeting export industries by bestowing upon them the benefit of several government actions which, although not comprised of cash subsidies in the form of direct grants, loans or debt forgiveness, are nevertheless based on the principle of active government intervention and support. It is clear that the rigid construction of present law is inadequate to the task of disciplining these government policies, which unquestionably have the same effect as a normal cash subsidy. These practices—whether they be special home market protection, preferential procurement, or government control over private financing—must be quantified and brought under some effective discipline when they are part of an overall plan or scheme to promote exports in a specific industry. In this connection, domestic industries stress the need for more comprehensive and continuous monitoring by the U.S. Government of the very complex industrial policies of our trading partners in order to anticipate and deter the potentially injurious effects of export targeting practices.

Upstream subsidies and downstream dumping

Another major area of concern is unfair trade at prior stages of manufacture or production—the problem of so-called "upstream subsidies" and "downstream dumping"—of products which are subsequently incorporated into the final imported product. These problems have, in the view of many industries, multiplied in scope without any effective discipline under present law. Some domestic industries believe these policies and practicies are being adopted specifically to circumvent U.S. trade laws. But because of the rigid definitions of "like product" and "domestic industry" in these laws (which are partly a result of international obligations), they have been very difficult issues to address.

Natural resource subsidies

Growing concern is also being expressed by U.S. manufacturers of natural resource-based products which face increasing import competition from energy rich countries pricing their natural resources for domestic use below their prices for export or the fair market value. The Subcommittee on Trade held a separate hearing solely on the issue of foreign natural resource pricing practices and their impact, in particular to develop more appropriate standards under the countervailing duty law for determining the existence and amount of such subsidies.

Settlement agreements

Many in the private sector argue that acceptance of offsets has allowed foreign subsidies to continue and that greater discipline must be exercised over the use of quantitative restriction agreements as a means of settling unfair trade cases. Under present practice such arrangements are entered into without any requirement that the foreign government or exporters achieve the basic objectives of these laws by eliminating their subsidies or dumping. The consequences of import quotas relative to duties in terms of higher prices, reduced availability of supplies, and the impact on industry competitiveness should be fully assessed before such quota arrangements are accepted. Moreover, quotas should be used only

in limited circumstances as an interim solution and should not become a generalized alternative to normal remedies under the law.

Procedural simplification; clarification of standards

The need for procedural simplification and clearer standards are perennial ones, and it was not surprising that many groups believe improvements are necessary in these areas. In particular, the need to simplify and rationalize price adjustments in antidumping investigations and to eliminate unnecessary interlocutory court review have been addressed. There is general consensus on the need to revamp totally the unsatisfactory manner in which these two laws presently deal with the pricing policies of nonmarket economies. The Committee sought a solution to this problem, but after considerable discussion and analysis was unable to reach a consensus on an appropriate and equitable alternative.

Small business assistance

A particular concern of many groups is the nearly insurmountable burden experienced by small business entities in trying to file and litigate cases. In some instances, the legal fees and other start-up costs have deterred small business entities from pursuing actions. Another problem of equal magnitude is the widespread lack of information among small business groups as to the many types of trade remedies available under U.S. law and the particular law under which a given complaint might best be pursued. Several hearing witnesses expressed the need for a central office in the government to disseminate and explain basic information about the various trade remedies available under U.S. laws.

PRINCIPLES UNDERLYING H.R. 4784, AS AMENDED

H.R. 4784, as amended and ordered reported, seeks to address legitimate concerns about the scope and administration of the antidumping and countervailing duty laws while at the same time maintaining the basic principles of due process, transparency, and fairness which underlie these statutes. In particular, a basic criterion guiding the Committee in including amendments of these laws in the bill was to maintain their consistency with the letter and the spirit of the General Agreement on Tariffs and Trade (GATT), particularly with Articles VI and XVI, which govern the use of these remedies, and the Agreement on Antidumping Measures and the Agreement on Subsidies and Countervailing Measures negotiated under the auspices of the GATT and signed by the United States in 1979.

A second basic principle of H.R. 4784, as amended, is to maintain present standards of material injury to a U.S. industry as a basic requirement in applying a remedy for all of the unfair practices set forth in the bill (except when the injury test does not apply under present law in cases of subsidy practices maintained by countries that have not signed the Agreement on Subsidies and Countervailing Measures or undertaken substantially equivalent obligations). Therefore, the bill only addresses practices with a materially injurious effect in the U.S. market. It does not deal with the effects on

U.S. industry of such practices in third-country markets or with the need for reciprocity in the market of the exporting country.

The Committee believes that the GATT agreements obligate signatory countries to refrain from using the types of practices addressed by H.R. 4784 in a manner that injures or impairs trade benefits of other signatories. Expansion of the scope of the countervailing and antidumping laws to cover these subtle and rapidly growing forms of unfair behavior should not be viewed as a unilateral departure by the United States from its international understandings. Rather, the amendments recognize the fact that conditions of commerce are rapidly changing; government intervention throughout the world is growing at a disturbing pace and is also changing form. If the United States fails to respond to the challenge of new unfair trade practices, the entire concept of free trade and market forces will eventually erode beyond repair.

With respect to the inclusion of procedural improvements and other streamlining measures, it should be noted that H.R. 4784, as amended, is designed to make the antidumping and countervailing duty laws more accessible, less costly, less complex and time-consuming, and easier for the respective agencies to administer. At the same time, the bill does not eliminate any fundamental procedural safeguards that parties to investigations now enjoy, and it maintains full adherence of these laws to the substantive and procedural requirements of the GATT agreements. In fact, the bill retains the basic framework of open procedures—hearings, access to information, and judicial reviews—that characterize present law. The bill does eliminate needless procedural complexities, however, and provides a much better basis for efficient administration with fewer costs to the litigants and the prospect of more timely relief for petitioners. These streamlining measures are essential if the process is to avoid becoming overburdened with legalisms.

Finally, the Committee deliberately confined the scope of H.R. 4784, as amended, to revisions of the countervailing duty and antidumping statutes and related issues. The Subcommittee on Trade received many suggestions during its hearings and in subsequent written comments about the need for reforms in the import relief and retaliatory authorities under sections 201–203 and section 301 of the Trade Act of 1974. The decision to restrict the scope of H.R. 4784 to laws dealing with injurious unfair trade practices in the U.S. marketplace recognizes that (1) domestic industry generally regards unfair import competition as the primary trade problem that needs priority attention; and (2) as a practical matter, successful passage requires legislation that is manageable and limited in controversial content. At the same time, the Committee recognizes the need to address the adequacy and operation of other trade remedy laws and intends to make whatever improvements are necessary in a subsequent bill at the earliest opportunity.

Summary of H.R. 4784, as Amended—The Trade Remedies Reform Act of 1984

H.R. 4784, as amended and ordered reported by the Committee on Ways and Means, consists of two titles: Title I amends the scope and certain administrative elements of the countervailing duty and

antidumping duty laws under Title VII of the Tariff Act of 1930 as amended by the Trade Agreements Act of 1979; Title II makes related procedural improvements through the addition of two new sections to the Tariff Act of 1930.

TITLE I.—AMENDMENTS TO COUNTERVAILING DUTY AND ANTIDUMPING DUTY LAWS

SECTION 101.—CLARIFICATION OF GENERAL RULE

Section 101 clarifies that the countervailing duty and antidumping laws cover likely sales and certain leasing arrangements, as well as sales and imports that have already occurred.

SECTION 102.—TERMINATION OR SUSPENSION OF INVESTIGATION

The Committee deleted section 102 of H.R. 4784 as introduced, which expedited the timetable for antidumping investigations and shortened extensions of investigations in "extraordinary circumstances." Section 102 of H.R. 4784 as ordered reported amends the authorities to suspend countervailing duty investigations or to terminate antidumping or countervailing duty investigations based upon settlement agreements:

A. Offsets and grace periods

The use of export taxes or other types of "offsets" is eliminated as a basis for suspending countervailing duty cases. The 6-month grace period for eliminating a subsidy or dumping practice under a suspension agreement is eliminated.

B. Quantitative restriction agreements

The bill as introduced limited the authority to enter into import quota-type arrangements as a basis for suspending countervailing duty investigations or terminating either antidumping or countervailing duty cases only to circumstances in which the President determined that import quotas would not have a greater adverse effect on consumer prices and the availability of supplies than imposition of duties. Also, the authority to accept quantitative restriction agreements was shifted from the Secretary of Commerce as administering authority to the President.

The Committee amended the provisions on quantitative restriction agreements to maintain the authority of the Secretary of Commerce, rather than the President, to accept such agreements. The Committee amendment also includes other public interest factors in addition to consumer impact which the administering authority must take into account in deciding whether to suspend or terminate an investigation.

SECTION 103.—REVIEWS AND DETERMINATIONS REGARDING CERTAIN AGREEMENTS

The Committee amended H.R. 4784 as introduced to add section 103 requiring the President to enter into negotiations within 90 days after the administering authority accepts quantitative restriction agreement with the foreign government to seek elimination of the subsidy or dumping or its reduction to a level that removes the

injurious effects. Countervailing or antidumping duties must be imposed to offset any remaining injurious subsidy or dumping margin upon the expiration date, if any, of the agreement.

Annual reviews of outstanding antidumping and countervailing duty orders are required only if requested by an interested party, rather than in all cases as under present law.

SECTION 104.—INITIATION OF ANTIDUMPING DUTY INVESTIGATIONS

The Committee amended H.R. 4784 as introduced to add a new section 104 to deal with the problem of persistent dumping involving several different producers in several different countries. Section 104 strengthens guidelines for self-initiation of antidumping investigations and requires further monitoring by the administering authority of imports from other countries once a domestic industry has proven injurious dumping from one source and then has reason to believe that additional dumping is occurring.

SECTION 105.—DEFINITIONS AND SPECIAL RULES REGARDING UPSTREAM AND OTHER SUBSIDIES, DOWNSTREAM DUMPING, MATERIAL INJURY, AND INTERESTED PARTIES

The Committee deleted section 105 of H.R. 4784 as introduced, which amended the antidumping provisions applicable to nonmarket economies. Section 105 of H.R. 4784 as amended broadens the coverage of subsidy and dumping practices subject to the countervailing duty and antidumping laws, clarifies application of the injury test, and expands the scope of parties with standing in investigations:

A. Subsidies

The list of practices specifically defined in the statute as subsidies actionable under the countervailing duty law is expanded to include export targeting subsidies, natural resource subsidies, and upstream subsidies. The material injury test as applied under present law must be met for countervailing duties to be imposed.

1. Export targeting subsidies.—"Export targeting subsidies" are defined as government plans or schemes involving coordinated activities that are bestowed on specific enterprises or industries and have the effect of assisting the beneficiaries to become more competitive in exporting particular products. The provision is intended to deal with indirect forms of government assistance that do not involve a cash transfer but nevertheless have a subsidizing effect. An illustrative list of such practices is included in the bill.

2. Natural resource subsidies.—"Natural resource subsidies" involve a government controlled or regulated natural resource price that is lower for domestic use than the export price or the fair market value, is not freely available to U.S. purchasers for export, and constitutes a significant component cost of the product under investigation.

A Committee amendment applies fair market value rather than export price as the basis for measuring the level of subsidy when there are no "significant" exports, rather then no exports at all, of the product or when the export price is distorted.

3. Upstream subsidies.—"Upstream subsidies" are subsidies at prior stages of production than the final imported article made in the same country which result in a price for the input that is lower than the generally available price and which have a significant effect on the cost of manufacturing the final product.

The Committee amended the definition to clarify that customs unions would be treated as one country and that the calculation of the amount of upstream subsidy would include only the actual benefit to the manufacturer of the final product.

B. Downstream dumping

"Downstream dumping" is defined as sales of materials below their fair market value which are incorporated into the final imported product that is subsidized or dumped if the dumped price of the input is below the generally available price of that input and has a significant effect on the cost of manufacturing the final product.

The Committee amended the method of calculating downstream dumping to include only the amount of actual benefit to the manufacturer of the final product.

C. Clarification of injury test provisions

1. Cumulation.—As amended by the Committee, the principle of cumulation of imports of like products from two or more countries under simultaneous investigation is mandated for purposes of assessing injury if such imports compete with each other and with like products of the domestic industry in the U.S. market.

2. Threat of injury.—Statutory guidelines are established for determining threat of material injury, based upon previous legislative history.

D. Interested party

The definition of an interested party with standing to file antidumping or countervailing duty petitions is expanded to include coalitions of firms, unions, or trade associations that have individual standing.

SECTION 106.—HEARINGS

The Committee amended H.R. 4748 as introduced to add section 106 which eliminates the requirement in present law that the International Trade Commission hold duplicate hearings during its injury investigations when antidumping and countervailing duty cases involve the same merchandise from the same country. Opportunity is provided for submission of written comments.

SECTION 107.—VERIFICATION OF INFORMATION

Section 107 extends present requirements for verification of information to decisions by the administering authority to revoke outstanding antidumping or countervailing duty orders.

A Committee amendment also requires verification in annual reviews of outstanding antidumping or countervailing duty orders if timely requested, except the requirement applies only upon good

cause shown if verification has taken place in the preceding two annual reviews.

SECTION 108.—RELEASE OF CONFIDENTIAL INFORMATION

Section 108 establishes a new standardized method for releasing confidential information, based upon the filing of "standing requests" by all parties at the outset of an investigation and routine decisions on release as confidential information is submitted. Corporate in-house counsel could receive confidential information under protective order as retained counsel can under present law.

SECTION 109.—SAMPLING AND AVERAGING IN DETERMINING UNITED STATES PRICE AND FOREIGN MARKET VALUE

Section 109 authorizes sampling and averaging techniques utilized by the administering authority in determining foreign market value under the present antidumpng law also to be used in determining United States price in dumping investigations and in all aspects of the annual review of outstanding countervailing and antidumping duty orders. The authority to select appropriate samples and averages would reside exclusively with the administering authority.

SECTION 110.—ELIMINATION OF INTERLOCUTORY APPEALS

Section 110 eliminates all interlocutory judicial review by the U.S. Court of International Trade during the course of countervailing duty and antidumping investigations. All challenges to agency determinations would be combined and reviewable by the court after final agency action has been taken.

TITLE II.—MISCELLANEOUS PROVISIONS

SECTION 201.—ESTABLISHMENT OF TRADE REMEDY ASSISTANCE OFFICE AND TARGETING SUBSIDY MONITORING PROGRAM IN THE UNITED STATES INTERNATIONAL TRADE COMMISSION

Section 201 adds two new sections to the Tariff Act of 1930 establishing new functions for the International Trade Commission.

A. Trade remedy assistance office

A central office is created in the ITC to assist U.S. industries with information and advice on the various trade remedy laws. Also, each agency responsible for administering trade laws is required to provide special assistance to qualifying small businesses.

B. Targeting subsidy monitoring program

The International Trade Commission must establish a program for continuous and coordinated monitoring and analysis of the industrial plans and policies of foreign governments. Regular reports would be issued on the information obtained.

SECTION 202.—ADJUSTMENTS STUDY

Section 202 requires the Secretary of Commerce to conduct a study of its current practices in making adjustments to various

prices used under the antidumping law and submit a report to the Congress within one year containing recommendations as appropriate for simplifying and modifying these practices.

SECTION 203.—EFFECTIVE DATES

The provisions of H.R. 4784, as amended, would take effect on date of enactment except as otherwise specified.

COMMITTEE ACTION

The Subcommittee on Trade held seven days of hearings on March 16 and 17, April 13, 14, and 19, and May 4 and 11, 1983, to consider options to improve the various trade remedy statutes, including the countervailing duty and antidumping laws (published in Committee on Ways and Means Serials 98–14 and 98–15). During those hearings, the Subcommittee received extensive testimony from Members of Congress, officials of Executive branch agencies, trade associations, labor unions, retail and consumer groups, individual companies, legal practitioners, academicians, and other individuals describing problems with existing laws and proposing modifications. The Subcommittee held an additional day of hearings on October 20, 1983, to receive testimony specifically on issues relating to subsidization of natural resources.

On September 28, October 3 and 4, 1983, and on February 2 and 7, 1984, the Subcommittee held markup sessions on conceptual amendments to the antidumping and countervailing duty laws, based upon suggestions received during the hearings, extensive written comments received subsequent to the hearings, and other pending legislation. H.R. 4784 was introduced on February 8, 1984, to reflect Subcommittee decisions during these markup sessions. In a final markup session on February 9 the Subcommittee agreed to three substantive amendments in H.R. 4784. On February 29, 1984, the Subcommittee ordered H.R. 4784 favorably reported by voice vote to the full Committee on Ways and Means with the amendments agreed to on February 9.

On April 3, 4, and 10, the Committee on Ways and Means considered H.R. 4784 as reported in markup sessions. On April 10, the Committee ordered H.R. 4784 favorably reported with amendments by nonrecorded vote.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

SHORT TITLE

H.R. 4784, as amended, may be cited as the "Trade Remedies Reform Act of 1984."

SECTION 2.—REFERENCE

Section 2 states that any amendment or repeal in H.R. 4784 of a title, subtitle, part, section, or other provision refers to such provisions in the Tariff Act of 1930, unless otherwise expressly provided.

SECTION 101.—CLARIFICATION OF GENERAL RULE

Present law

Section 701(a) states the general rule that a countervailing duty shall be imposed where (1) the administering authority finds a subsidy with respect to merchandise "*imported* into the United States" and (2) the ITC finds that an industry is materially injured or threatened with such injury "by reason of *imports* of that merchandise." Section 731 requires the administering authority to determine in antidumping investigations that "foreign merchandise is being, or is likely to be, *sold* in the United States at less than its fair value." [Emphasis added]

Explanation of provision

Section 101 of H.R. 4784 clarifies the applicability of countervailing duty law to situations where a product has been or is likely to be sold for importation but has not actually been imported. Subsection (a) amends section 701(a) to include the phrase "or sold (or likely to be sold) for importation" after the present enabling language of the statute, which refers solely to merchandise imported. Subsections (a) and (b) make conforming changes in sections 701 and 705(b)(1).

Section 101 also clarifies the applicability of both the countervailing duty and antidumping laws to leasing arrangements that are the equivalent of sales. Subsections (a) and (c) amend sections 701, 705, 731, and 735 by providing that any reference to sales also includes such leases.

Reasons for change

Section 101 is intended to eliminate uncertainties about the authority of the Department of Commerce and the ITC to initiate countervailing duty cases and to render determinations in situations where actual importation has not yet occurred but a sale for importation has been completed or is imminent. Antidumping law has, since its inception, applied not only to imports but to sales or likely sales. However, there has been uncertainty as to the applicability of countervailing duty law to such situations because of the limiting language which refers solely to imports.

The amendment is particularly important in cases involving large capital equipment, where loss of a single sale can cause immediate economic harm and where it may be impossible to offer meaningful relief if the investigation is not initiated until after importation takes place. In cases where injury or threat of injury from a subsidy may occur prior to actual importation, the investigation should not await such importation.

The addition of language regarding leases is intended to clarify the applicability of both laws to sham leases or leases which are tantamount to sales. Because of tax considerations or other business reasons, leasing arrangements are often utilized to accomplish what are in effect transfers of ownership. The Committee intends that the coverage of both laws extend to such arrangements if the Department of Commerce finds them to be equivalent to sales.

SECTION 102 (OF H.R. 4784 AS INTRODUCED).—PERIOD FOR CERTAIN PRELIMINARY DETERMINATIONS; CONGRESSIONAL NOTIFICATION

Section 102 of H.R. 4784 as introduced provided simultaneous timetables for investigations and determinations in antidumping and countervailing duty cases based on the shorter deadlines applicable to countervailing duty cases under present law. Specifically, section 102 amended section 733(b) to require a preliminary determination by the administering authority within 85 days after an antidumping petition is filed or an investigation self-initiated, rather than within the 160 days provided under present law. Section 102 of the bill as introduced also amended sections 703(c) and 733(c) to limit further the authority to extend the deadline for preliminary determinations by declaring a countervailing duty or antidumping investigation "extraordinarily complicated." Such extensions would be reduced to 30 days and the administering authority would be required to notify the appropriate Committees of Congress, in addition to the parties to the investigation as under present law, of an intention to postpone any preliminary determination, including an explanation of the reasons.

These amendments were included in the bill as introduced in order to accelerate antidumping determinations and thereby provide earlier provisional relief, and to end the almost routine practice of extending deadlines for preliminary determinations without due regard to Congressional intent that the case be extraordinarily complicated. In particular, the provision of simultaneous timetables was intended to reduce costs and the administrative burden and delay for both interested parties and the ITC by eliminating the necessity for two hearings on injury in cases involving petitions filed under both laws on the same merchandise from the same country.

The Committee deleted this section after receiving evidence from the Department of Commerce and from domestic industries opposing the amendments and indicating that the current length of time for antidumping investigations is necessary to ensure adequately supported decisions, to provide a meaningful opportunity for petitioners to comment on information presented by foreign parties, and to reduce the possibilities of expensive and lengthy judicial review. The Department also has not extended deadlines in a single case since August 1, 1983. In lieu of this section, the Committee amended the bill to add section 106 addressing the issue of duplicate ITC hearings.

SECTION 102 (OF H.R. 4784 AS REPORTED).—TERMINATION OR SUSPENSION OF INVESTIGATION

Present law

Sections 704(a) and 734(a) of the countervailing duty and antidumping laws respectively authorize the administering authority or the ITC to terminate an investigation, after notice to all parties, upon withdrawal of the petition. The ITC cannot terminate before a preliminary determination by the administering authority. The law does not specify or limit the circumstances under which a petition may be withdrawn and the investigation thereby terminated,

although to date there have been no petitions withdrawn and cases thereby terminated prior to a preliminary determination.

Settlement of countervailing duty or antidumping cases through suspension of investigations may result from agreements either (1) to eliminate (or offset) the practice or to cease the exports; or (2) in "extraordinary circumstances," to eliminate the injurious effect of the exports.

The administering authority may suspend a countervailing duty investigation under section 704(b) at any time before its final determination if the government of the subsidizing country agrees, or exporters who account for substantially all of the imports of the merchandise agree (1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy on exports to the United States within six months after the suspension, or (2) to cease exports of the subsidized merchandise to the United States within six months after the suspension.

The administering authority may suspend an antidumping investigation under section 734(b) before its final determination if the exporters who account for substantially all of the imports of the merchandise agree (1) to cease exports of the merchandise to the United States within six months after the suspension, or (2) to revise their prices to eliminate completely any dumping margin.

No suspension agreement can be accepted under either law unless it provides a means of ensuring that the quantity exported to the United States during the interim period before complete elimination or offset of the subsidy or cessation of exports does not exceed the quantity exported to the United States during the most recent representative period.

In "extraordinary circumstances," the administering authority may also suspend a countervailing duty investigation under section 704(c) before its final determination upon acceptance of an agreement from the government or from exporters accounting for substantially all of the imports that will eliminate completely the injurious effect of exports of the merchandise to the United States. Suspension may take the form of an agreement with the foreign government (not with exporters) to restrict the volume of imports.

In "extraordinary circumstances," the administering authority may suspend an antidumping investigation under section 734(c) before its final determination upon acceptance of an agreement to revise prices from exporters accounting for substantially all of the imports that will eliminate completely the injurious effect of exports of the merchandise to the United States. The agreement must also prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise, and for each entry of each exporter the amount by which the estimated foreign market value exceeds the U.S. price cannot exceed 15 percent of the weighted average excess for all less-than-fair-value entries of the exporter. Unlike countervailing duty cases, the administering authority is not authorized to suspend antidumping investigations on the basis of quantitative restriction agreements.

Legislative history states the "injurious effect" standard is lower than material injury; there must be no discernable injurious effect by reason of any remaining net subsidy or dumping margin. Agree-

ments with exporters must be with the U.S. Government, not among exporters or with U.S. private parties.

Before suspending any countervailing duty or antidumping investigation, sections 704(e) and 734(e) require the administering authority (1) to notify and consult the petitioner of its intention, and give 30 days advance notice to other parties and to the ITC; (2) to provide a copy of the proposed agreement to the petitioner at the time of notification, including an explanation of how it will be carried out and enforced and how it meets the statutory requirements; and (3) to permit all parties to submit comments and information for the record before the notice of suspension is published.

No form of suspension agreement can be accepted unless the administering authority is satisfied suspension is in the public interest and effective monitoring of the agreement by the United States is practicable. The administering authority must publish notice of any suspension of investigation and issue an affirmative preliminary determination unless it was previously issued.

Within 20 days after suspension of an investigation under an agreement to eliminate injurious effects, a domestic interested party may request under section 704(h) or section 734(h) a review by the ITC, within 75 days after the petition filing, to determine whether the injurious effect of imports of the merchandise is eliminated completely by the agreement. If affirmative, suspension continues as long as the agreement remains in effect, is not violated, and meets the statutory requirements. If negative, the agreement is void and the investigation resumes on the date notice is published, as if the affirmative preliminary determination was made on that date.

An investigation must be continued if the administering authority receives, within 20 days after notice of suspension is published, a request for continuation under section 704(g) or section 734(g) from a domestic interested party or from the foreign government involved in a countervailing duty investigation, or from the exporters in an antidumping investigation. If the final determination is negative, the agreement and investigation terminate. If the final determinations are affirmative, a countervailing or antidumping duty order is not issued so long as the agreement remains in force and continues to meet the statutory requirements and the parties carry out their agreement obligations.

If the administering authority determines under section 704(i) or section 734(i) that an agreement is being or has been violated or no longer meets the requirements (other than elimination of injury), the administering authority must (1) suspend liquidation of unliquidated entries; (2) resume its final investigation if it was not completed; (3) issue a countervailing duty or antidumping order immediately if the investigation was continued upon request and the final determinations were affirmative; and (4) notify the petitioner, interested parties, and the ITC. Any intentional violation is subject to a civil penalty as if it were a section 592 fraud case. If suspension is terminated or an investigation continued, any final determination or annual review considers all imports without regard to the effect of any agreement.

Explanation of provision

Section 102 of H.R. 4784 as ordered reported amends the authorities to terminate or suspend countervailing duty or antidumping investigations in three major respects: (1) It eliminates the authority to suspend countervailing duty investigations based on offsets of net subsidies by the foreign government or exporters; (2) it removes the 6-month grace period for eliminating subsidies or dumping margins under suspension agreements; and (3) it requires the administering authority to take various public interest factors into account in deciding whether to terminate or suspend countervailing duty investigations or to terminate antidumping investigations based on quantitative restriction agreements. In addition, section 102 requires notification of the Commissioner of Customs if the administering authority considers violation of an agreement to be intentional.

Section 102 eliminates the authority under section 704(b)(1) to suspend a countervailing duty investigation based on an agreement by the foreign government involved or by exporters who account for substantially all of the merchandise subject to the investigation to offset completely the amount of the net subsidy on merchandise exported to the United States. Investigations could be suspended on the basis of agreements to eliminate the subsidy completely or to cease exports of the subsidized merchandise to the United States as under present law.

Section 102 also amends section 704(b) and (d) and section 734(b)(1) and (d) to eliminate the 6-month period after the date on which a countervailing duty or antidumping investigation is suspended within which the foreign government or exporters agree to eliminate the net subsidy involved or to cease exports of the merchandise to the United States. As a result of these amendments investigations could be suspended under these authorities only if the foreign government or exporters involved agree to eliminate any net subsidy or to cease exports of the merchandise to the United States on the date of the suspension.

Section 102 of H.R. 4784 as introduced amended the authority under section 704(c) to suspend countervailing duty investigations in extraordinary circumstances on the basis of quantitative restriction agreements in two respects. First, the authority to accept any quantitative restriction agreement was shifted from the administering authority under present law to the President. Second, as a condition for accepting such an agreement, the President was required to determine, following consultations with potentially affected consuming industries and with all U.S. producers of like merchandise, that entry into force of the quantitative restriction would not, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, have a greater adverse effect on U.S. consumers than the imposition of countervailing duties. Sections 704 and 734 were also amended to include these same two limitations with respect to the termination of countervailing duty or antidumping investigations on the basis of import quota agreements.

The Committee amended the provisions of section 102 as introduced relating to quantitative restriction agreements in two re-

spects. First, the Committee restored the authority of the administering authority as under present law to accept quantitative restriction agreements in all cases, rather than shifting this authority to the President. Second, the Committee included other factors which the administering authority must take into account in addition to consumer impact in deciding whether termination of a countervailing duty or antidumping investigation or suspension of a countervailing duty investigation is in the public interest.

As ordered reported, section 102 amends section 704(d) by enumerating certain factors which the administering authority must take into account in deciding whether suspension of a countervailing duty investigation on the basis of a quantitative restriction agreement is in the public interest. As under present law, the administering authority cannot accept import restrictions or any other form of agreement under section 704(b) or (c) as a basis for suspending a countervailing duty investigation unless it is satisfied that suspension of the investigation is in the public interest. In the case of quantitative restriction agreements, section 704(d) as amended by the Committee requires the administering authority to take into account the following factors, in addition to such other public interest factors as are considered necessary or appropriate:

(1) Whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on U.S. consumers than the imposition of countervailing duties;

(2) The relative impact on the international economic interests of the United States; and

(3) The relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

Before making a decision regarding the public interest, the administering authority must consult with potentially affected consuming industries and with potentially affected producers and workers in the domestic industry producing the like merchandise, including such producers and workers not party to the investigation.

The requirement under section 704(d) of present law that effective monitoring of the agreement by the United States is practicable would continue to apply as the second condition for acceptance of any form of suspension agreement, including import quotas. There would still be no authority to suspend antidumping investigations under any circumstances on the basis of quantitative restriction agreements.

Since petitions have been withdrawn and investigations terminated in the past on the basis of quantitative restriction agreements, section 102 as ordered reported also amends sections 704(a) and 734(a) to conform the authorities to terminate countervailing duty or antidumping investigations as a result of quantitative restriction agreements to the amendments described above in the authority to suspend countervailing duty investigations. Invesatigations under either law could not be terminated by the administering authority accepting any agreement to limit the volume of imports into the United States of the merchandise under investigation unless the administering authority is satisfied that termina-

tion on the basis of that agreement is in the public interest. In making a decision regarding the public interest, the administering authority must take into account the same three factors described above with respect to suspension of countervailing duty investigations based on import quota agreements, after consulting with potentially affected consuming industries and with potentially affected U.S. producers and workers in the domestic industry producing the like merchandise. Any such agreement to terminate countervailing duty investigations must be offered by the foreign government involved, not by exporters, consistent with suspension agreements. The administering authority and the ITC would retain their present authority to terminate investigations in any circumstances not involving import restrictions.

Any quantitative restriction agreement to terminate a countervailing duty or antidumping investigation or to suspend a countervailing duty investigation also includes any understanding accepted by the administering authority that restricts the volume of imports of the merchandise under investigation into the United States, such as voluntary export restraints.

The authorities to accept agreements with foreign governments or exporters exist solely as a basis for terminating or suspending antidumping or countervailing duty investigations. Agreements apply only to the products and countries under investigation, and consist only of those measures enumerated in sections 704 and 734 of present law undertaken by the foreign government or exporters involved to eliminate or limit their injurious practices. These existing authorities and the amendments to them in section 102 of the bill do not contemplate or authorize any separate or additional administrative action to regulate U.S. interstate commerce or the export of U.S. goods. The sole result of such agreements is the substitution for potential imposition of duties of either quantitative import restrictions or the cessation of the exports or of the offending practice by the foreign government. The only recourse in the absence of such agreements is either termination upon withdrawal of the petition or continuation of the investigation and, if appropriate, imposition of antidumping or countervailing duties. The bill also does not in any way expand authority to enforce such agreements or to impose penalties for violations of such agreements beyond such authorities in present law.

Finally, section 102 amends sections 704(i)(1) and 734(i)(1) by adding a requirement that the administering authority notify the Commissioner of Customs if it considers a violation of an agreement suspending a countervailing duty or antidumping investigation to be intentional. The Commissioner would then take appropriate action as provided under section 704(i)(2) or section 734(i)(2) of present law.

Reasons for change

The Committee is concerned that the authorities under present law to terminate or suspend investigations based on settlement agreements contain too much flexibility and discretion. As a result, subsidy or dumping practices have been permitted to continue and the antidumping and countervailing duty laws have been used as a device to implement quantitative import restrictions, including vol-

untary restraints, without sufficient consideration of their economic consequences, and contrary to Congressional intent that the primary remedy be offsetting duties. The amendments under sections 102 and 103 of H.R. 4784, as ordered reported, place further conditions on the use of the settlement authorities with a view to seeking elimination of the unfair practices, while at the same time recognizing that termination or suspension agreements may be in the national interest under certain limited circumstances.

The Committee has received many complaints from the private sector about the acceptance of agreements from foreign governments to offset the complete amount of net subsidies as a basis for suspending countervailing duty investigations under section 704(b). Normally offsets take the form of the foreign government agreeing to impose an export tax equal to the amount of the net subsidy, theoretically equivalent to an import duty. However, there is no required verification that the tax is actually being collected. In the case of State-owned enterprises there is no guarantee that the government is not funneling funds into the enterprise through various indirect assists as a substitute for the subsidy in order to ensure export competitiveness. Any delays in the calculation of an export tax will increase benefits to exporters if there are frequent and sharp devaluations of the currency.

Consequently, the Committee believes elimination of the authority to accept agreements to impose offsets as a basis for suspending countervailing duty investigations is necessary in order to close the present loophole which permits foreign governments to continue their subsidy practices. In turn, use of offsets could not constitute changed circumstances for purposes of review and possible revocation of a countervailing order under section 751. However, existing export taxes, duties, or other charges, if they are verifiable, could still be applied as offsets to reduce the amount of gross subsidy in order to determine the net subsidy under section 771(b) on which a countervailing duty is based.

The Committee also believes that the ability of a foreign government or exporters to continue to subsidize or to sell at less than fair value for up to six months under a suspension agreement is unwarranted, exposing domestic industry to the effects of continued unfair competition without a remedy during this period. Precluding suspension of an investigation until the foreign subsidy or dumping actually ceases is also intended to provide an incentive for the foreign government or exporters to eliminate the unfair practice as quickly as possible.

The limitation placed by section 102 of the bill as amended on existing authorities to terminate or suspend investigations based on agreements to restrict imports arise from the Committee's concern that the countervailing duty and antidumping laws can be used by domestic industries and foreign governments to obtain cartel or orderly marketing arrangements that may be contrary to the public interest, including the interest of the domestic industry itself and its workers, while allowing unfair trade practices to continue. For example, certain segments of the steel industry have complained that they were not even consulted in advance about the United States-European Communities (EC) Steel Arrangement, concluded in 1982 as a basis for withdrawal of petitions by other por-

tions of the industry and termination of investigations. They maintain the Arrangement has had a detrimental impact in terms of higher prices and reduced supplies of basic steel for steel finishers and fabricators.

Under present law, a domestic industry may withdraw its petition and the administering authority terminate an investigation as a result of an import quota arrangement without any consideration of the relative economic consequences. The amendments under section 102 seek to prevent abuse of the termination and suspension authorities by limiting settlement of cases based on quantitative restrictions only to the circumstances in which the administering authority decides that import quotas will not be more adverse to the public interest than imposition of duties. The Committee amended section 102 as introduced to expand the public interest factors which must be taken into account to include not only the impact on consumer prices and supplies but also other relevant effects, such as the impact on the competitiveness of the domestic industry, including its workers and investment, and on international economic interests. The amendments also ensure that all segments of the industry potentially affected, including its workers, would be consulted in deciding the public interest.

Basically, the countervailing duty and antidumping laws should be used as Congress intended to try to ensure free and fair trade competition. In most cases the investigation should be completed and duties imposed rather than permitting the foreign country to continue unfair trade practices and using these laws to guarantee either the domestic industry of foreign producers a share of the U.S. market. At the same time, however, the Committee recognizes that settlement of cases based on import quotas may be warranted and have less adverse effects on the public interest than imposition of duties in certain circumstances. While the Committee believes it is necessary to limit the administering authority's discretion, section 102 maintains sufficient flexibility to permit quotas as one method of limiting the adverse effects of unfair trade in appropriate cases.

The Committee also decided there was not sufficient justification based on performance to date to shift the authority to accept quantitative restriction agreements from the Department of Commerce to the President. The Committee was concerned that such a shift would necessarily involve other agencies in decisions whether to accept agreements, such as the Department of the Tresury in which the Congress lost confidence prior to 1979 in its administration and enforcement of the trade remedy laws.

SECTION 103.—REVIEWS AND DETERMINATIONS REGARDING CERTAIN AGREEMENTS

Present law

Section 751(a) requires that at least once during each 12-month period following publication of a countervailing duty or antidumping order, or notice of suspension of an investigation, the administering authority must (1) review and determine the amount of any net subsidy; (2) review and determine the amount of any antidumping duty; and (3) review the current status of, and compliance with,

any suspension agreement including the amount of any net subsidy or dumping margin involved.

Section 751(b) requires the administering authority or the ITC to review any suspension agreement of affirmative determinations whenever it receives information or a request showing changed circumstances sufficient to warrant a review. The Commission considers whether, in light of changed circumstances, an agreement suspending a countervailing duty or antidumping investigation continues to eliminate completely the injurious effects of imports of the merchandise. Without good cause shown, no suspension agreement or final affirmative determination can be reviewed for changed circumstances within less than 24 months after its publication. A hearing is held by the administering authority or the Commission during the review upon the request of any interested party. After the review, the administering authority may revoke a countervailing duty or antidumping duty order, in whole or in part, or terminate a suspended investigation, applicable to unliquidated entries entered, or withdrawn from warehouse, for consumption after a date it determines. If the Commission determines a suspension agreement no longer eliminates completely the injurious effect of imports, the agreement is then treated as not accepted and the administering authority and the Commission proceed with the countervailing duty or antidumping investigation as if the agreement had been violated on that date.

Explanation of provision

The Committee amended H.R. 4784 as introduced to add a new section 103 in conjunction with the amendments in section 102 concerning the authorities to terminate countervailing duty or antidumping investigations or to suspend countervailing duty investigations based on quantitative restriction agreements. Section 103 adds two requirements that (1) during the first year any quantitative restriction agreement is in effect the President seek complete elimination of the subsidy or dumping practices or of their injurious effects; and (2) countervailing or antidumping duties in the amount of any residual subsidy or dumping margin on imports causing material injury replace the quantitative restriction agreement upon its expiration. Section 103 also amends section 751 to require annual reviews of outstanding countervailing duty or antidumping orders only upon request.

Section 103 amends subtitle C of title VII of the Tariff Act of 1930 to add a chapter 2 containing new sections 761 and 762 and to make conforming changes in section 751 of present law.

New section 761 requires the President, within 90 days after the administering authority accepts a quantitative restriction agreement as a basis for terminating or suspending a countervailing duty investigation under section 704(a)(2) or (c)(3) as amended, or for terminating an antidumping investigation under section 734(a)(2) as amended, to enter into negotiations with the foreign government that is party to the agreement. The objective of the negotiations is to obtain (1) elimination of the subsidy or dumping practice, or (2) reduction of the net subsidy or the dumping margin to a level that eliminates completely the injurious effect of exports of the merchandise to the United States.

The administering authority may not implement any modification to a quantitative restriction agreement as a result of these negotiations unless within one year after the date it accepted the agreement the following conditions are met:

(1) The President submits to the administering authority and provides at the same time to persons who were, or are, petitioners and interested parties in the related proceedings (a) a description of the proposed actions the government is willing to take in order to achieve the negotiating objective; and (b) the proposed modifications to the quantitative restrictions in the agreement that the President believes are justified in response to implementation of those actions.

(2) The administering authority decides, on the basis of the best information available to it, that the proposed actions will either eliminate completely the subsidy or dumping practice or reduce the net subsidy or dumping margin.

(3) If the administering authority decides that the subsidy or dumping margin will be reduced, the ITC decides, on the basis of the best information available to it, that the proposed actions and proposed modifications in the quantitative restrictions are likely to eliminate completely the injurious effect of exports of the merchandise to the United States.

(4) The administering authority invites the comment of the present or former petitioners and other interested parties regarding the proposed actions and proposed modifications and takes into account all such comments that are submitted in a timely fashion.

(5) The administering authority is satisfied that the government concerned has actually implemented actions to eliminate the subsidy or dumping practice or to reduce the net subsidy or dumping margin to a level that eliminates completely the injurious effects.

Elimination of the subsidy or dumping practice or of its injurious effects must occur within the first 12 months that a quantitative restriction agreement is in effect if any modification is to be made by the administering authority in the import quota levels. The provisions regarding negotiations and possible modification of quantitative restrictions also cease to apply in the case of any such agreement suspending a countervailing duty investigation at such time as the agreement ceases to have force and effect because of a final negative determination in a requested continuation of the investigation under section 704(f) or because of a violation of the agreement found under section 704(i). While the annual review provisions of section 751(a) would continue to apply in the case of suspension agreements, section 103 amends section 751(b)(1) to exempt suspension agreements involving quantitative restrictions from the provisions for review due to changed circumstances given the interim review required under new section 761.

New section 762 requires that before the expiration date, if any, of any quantitative restriction agreement two determinations must be made:

(1) The administering authority must determine whether any subsidy is being provided, or whether the merchandise is being sold in the United States at less than fair value. If so, the ad-

ministering authority must also determine the amount of the net subsidy or the dumping margin as under present law.

(2) The ITC must determine whether imports of the kind of merchandise subject to the agreement will, upon its termination, cause or threaten to cause material injury to the domestic industry or materially retard establishment of such an industry.

These two determinations must be made on the record under procedures the two respective agencies prescribe by regulations. These determinations would be treated as final determinations made under section 705 or section 735 for purposes of judicial review under section 516A. The administrating authority and the Commission would hold hearings in accordance with section 774, as amended by section 106, at the request of any interested party in connection with its proceedings. If the determinations by both agencies are affirmative, the administering authority must issue a countervailing duty or antidumping duty order under section 706 or section 736 effective with respect to merchandise entered on or after the termination date of the agreement. Section 103 also amends section 751(b)(1) to apply the provisions for review due to changed circumstances to any affirmative determinations made under new section 762(a).

Finally, section 103 amends section 751(a)(1) to require annual reviews of outstanding countervailing duty or antidumping duty orders and of suspension agreements only if a request for such a review has been received by the administering authority.

Reasons for change

Under present law, there is no procedure following the acceptance of a quantitative restriction agreement to seek elimination of the unfair practice; the import quotas in effect, permits the unfair practice to continue as long as a specified volume of imports is not exceeded. In the past, settlement of countervailing duty or antidumping investigations has occurred on the basis of import quotas because of the existence of subsidies or dumping margins so large that a product likely would be totally withdrawn from the U.S. market should the countervailing or dumping duties be applied.

The requirements to conduct negotiations and to replace import quotas with duties of offset the amount of any injurious residual subsidy or dumping margin if a quantitative restriction agreement expires are directed toward seeking an end to extensive subsidy and dumping practices. The possibility of modifications in the import quota levels provides an incentive to a foreign country to eliminate or reduce its unfair trade practices before the agreement expires and countervailing or antidumping duties are imposed. At the same time, the interests of the domestic industry in maintaining a remedy are protected by prohibiting any modification in the import quota except by the administering authority after it has taken into account any comments from the private sector and is satisfied that the foreign country has actually eliminated the offending practice or its injurious effects.

The purpose of amending the annual review requirement is to reduce the administrative burden on the Department of Commerce of automatically reviewing every outstanding order even though

circumstances do not warrant it or parties to the case are satisfied with the existing order. The increasing number of outstanding orders subject to review each year imposes an unnecessarily heavy burden on limited staff resources.

SECTION 104.—INITIATION OF ANTIDUMPING DUTY INVESTIGATIONS

Present law

Section 732(a) requires the administering authority to self-initiate an antidumping duty investigation whenever it determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist. There is no formal requirement regarding monitoring of products subject to existing antidumping orders to determine whether self-initiation with respect to additional suppliers is warranted.

Explanation of provision

The Committee amended H.R. 4784 as introduced to add a new section 104, which pertains to situations where persistent dumping of the same product from several different countries may be occurring, and where injury to the domestic industry from dumping practices has already been established within the previous two years. Seciton 104 amends section 732(a) to establish a procedure for the administering authority and the ITC to monitor imports from additional supplier countries in order to determine whether possible self-initiation of additional dumping cases is warranted. In order for monitoring to be required, three conditions must be met. First, there must have been a prior case within the previous two years resulting in final affirmative determinations of dumping and injury regarding the product in question. Second, the peititioner must file a formal petition under section 732(b) with respect to imports of the same product from another country. Third, the subsequent petition must also allege that the elements necessary to impose duties exist with respect to the same product imported, or likely to be imported, from one or more additional supplier countries.

Upon receipt of the subsequent petition alleging persistent dumping, the administering authority must decide within 20 days whether supporting information reasonably available to the petitioner supplied in the petition and any relevant information available to the agency regarding each additional supplier country is sufficient to warrant self-initiation of investigations. If so, it must commence such investigations. If the adminstering authority finds that self-initiation with respect to an additional supplier country is not warranted, both the administering authority and the Commission must monitor imports from that country for such period of time (but not less than one year) as may be necessary for the administering authority to decide whether an investigation is warranted. If, at any time during such monitoring, there is sufficient evidence to commence a formal investgation, then the administering authority is required to self-initiate an investigation immediately.

The scope and extent of monitoring activities will depend upon the fact and circumstances of each case and the resources available

to the agencies. However, monitoring activities could include periodic comparisons (using appropriate sampling techniques and relying on information reasonably available to the agencies) of U.S. sales prices with estimated foreign market values, and may also include monitoring of the level and growth of imports. Such monitoring should include each additional supplier country, unless, during the course of such monitoring, the administering authority finds that allegations regarding a particular country are frivolous.

The new provision also requires that self-initiated prooceedings resulting from the monitoring activities described above be expedited "to the extent practicable" by the administering authority and the Commission. The extent to which procedures can be expedited will depend upon the amount of information already collected during monitoring and the degree to which normal antidumping investigation procedures can thereby be shortened.

Reasons for change

Section 732(a) as amended by section 104 is intended to reduce the burdens and costs on U.S. industry of obtaining relief from persistent dumping. The amendment does not change any of the basic requirements of providing dumping and injury for imposing duties on products from subsequent supplier countries. The monitoring activity should not be interpreted as a formal investigation, and is merely a necessary form of pre-investigative activity which the Committee believes is justified where a pattern of persistent dumping has emerged from the filing of consecutive petitions and from the existence of a previous affirmative finding. The Committee expects the Department of Commerce to take an activist role against persistent dumping, and the monitoring is intended to form a better framework for self-initiation so that the Department will be more active in addressing this problem.

The Committee's concern over more effective monitoring of persistent dumping allegations arises because several domestic producers have brought successful cases only to find that the source of dumped imports has shifted to additional supplier countries. The domestic producers do not always have the resources to pursue action against every foreign producer engaging in dumping activities, and the U.S. Government should share more of the burden of gathering information and initiating cases where appropriate if an industry has already demonstrated that it has been injured from foreign dumping. At the same time, the Committee does not intend that an unnecessary burden be placed on Department of Commerce resources and expects petitioning industries to base allegations of persistent dumping on supporting evidence reasonably available.

SECTION 105. DEFINITIONS AND SPECIAL RULES REGARDING UPSTREAM AND OTHER SUBSIDIES, DOWNSTREAM DUMPING, MATERIAL INJURY, AND INTERESTED PARTIES

Section 105 of H.R. 4784 as amended expands the scope of practices subject to countervailing duty or antidumping investigations, clarifies application of the material injury test, and expands the definition of parties with standing in investigations.

DEFINITION OF SUBSIDIES

Present law

Section 771(5) defines the term "subsidy" as having the same meaning as "bounty or grant" under section 303 of the Tariff Act of 1930 bestowed or paid with respect to an imported product, and including but not limited to:

(1) any export subsidy in the illustrative list contained in Annex A of the GATT Agreement on Subsidies and Countervailing Measures; and

(2) the following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(a) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(b) The provision of goods or services at preferential rates;

(c) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry;

(d) The assumption of any costs or expenses of manufacture, production, or distribution.

Explanation of provision

Section 105(a)(1) of H.R. 4784 amends the definition of the term "subsidy" by including a new subparagraph (A) under section 771(5) to add specifically any "export targeting subsidy," any "natural resource subsidy," or any "upstream subsidy," as described below, to the coverage of export subsidies and domestic subsidies which are presently subject to the countervailing duty law.

Reasons for change

The purpose of expanding the specific list of practices to be defined as subsidies for purposes of the countervailing duty law is to make that law more current in its coverage of the types of practices which governments now utilize. The law was last revised under the Trade Agreement Act of 1979 to implement in domestic law the provisions of the GATT Agreement on Subsidies and Countervailing Measures negotiated as part of the Tokyo round of Multilateral Trade Negotiations. That Agreement sought to prohibit the use of export subsidies by signatory countries and to discipline their use of domestic subsidies that cause material injury to industries or adversely affect the trade benefits of other countries.

However, intervention by governments in the marketplace to enhance the competitive performance of particular industries has increased and the form of subsidy practices has proliferated far beyond the imagination of the original drafters of the term "bounty or grant" in U.S. law or in the GATT. The Committee is very concerned about the distortions of trade patterns caused by subsidies and their impact on the competitiveness of domestic industries. Stronger disciplines are necessary to discourage the use of injurious subsidies, otherwise, in the longer run, they threaten the

operation of market forces and the viability of domestic economies as governments are forced to misallocate resources by matching foreign subsidy levels. A remedy should be available to restore "a level playing field" for U.S. industries in international trade competition with respect to current forms of subsidy practices. Consistent with GATT international trading rules, no countervailing duties can be imposed against such practices under the bill unless the current application and standards of material injury to the domestic industry are met.

EXPORT TARGETING SUBSIDIES

Present law

No provisions.

Explanation of provision

Section 771(5)(B)(i), as added by section 105(a)(1) of the bill, defines the term "export targeting subsidy" as "any government plan or scheme consisting of coordinated actions, whether carried out severally or jointly or in combination with any other subsidy under subparagraph (A), that are bestowed on a specific enterprise, industry, or group thereof, . . . the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise."

In addition to export or domestic subsidy practices covered under present law, export targeting actions under subparagraph (B)(i) would include, but not be limited to, the following practices:

(1) The exercise of government control over banks and other financial institutions that requires diversion of private capital on preferential terms to specific beneficiaries or into specific sectors. Provision of government loans on preferential terms, as opposed to diversion of private capital, is defined as a subsidy under present law.

(2) Extensive government involvement in promoting or encouraging anticompetitive behavior among specific beneficiaries, including:

(a) Assistance in planning and establishing joint ventures which have an anticompetitive export effect;

(b) Relaxation of antitrust rules normally applied to industries to assure the development of anticompetitive export cartels;

(c) Assistance in planning or coordinating joint research and development among selected beneficiaries to promote export competitiveness; and

(d) Regulations concerning the division of markets or allocation of products among selected beneficiaries.

(3) Speical protection of the home market that permits the development of competitive exports in a specific sector or product.

(4) Special restrictions on technology transfer or government procurement that limit competition in a specific sector or industry and thereby promote export competitiveness.

(5) The use of investment restrictions, including domestic content and expert performance requirements, that limit com-

petition in a specific sector or industry and thereby promote export competitiveness.

Section 771(5)(B)(ii), added by section 105(a)(1), specifies that in determining the level of an export targeting subsidy, the administering authority must use a method of calculation which, in its judgment and to the extent possible, reflects the full benefit of the subsidy to the beneficiary over the period during which the subsidy has an effect, rather than the cash cost of the subsidy to the government.

Reasons for change

The inclusion of export targeting as defined in new section 771(5)(B)(i) as a subsidy within the scope of the countervailing duty law reflects the growing recognition in the United States that foreign industrial targeting practices can have an injurious impact upon the viability and competitiveness of U.S. industries. Basically, the provision applies to situations where the foreign government has sought to develop a particular industry by creating a relatively risk free environment to provide a competitive advantage the industry would not otherwise have under normal market conditions. This advantage is typically achieved through a combination of practices such as directing private capital as well as government financial resources to the particular industry on a preferential basis, establishing an industry cartel, providing preferential sourcing of government procurement, closing the home market to foreign competition or investment during the establishment and development of the industry, then perhaps subsidizing export sales. Targeting is different from other potentially trade distorting practices in that it involves a combination of actions, any one of which may have a marginal impact on the industry's competitiveness, but which taken together artifically create a comparative advantage for the selected industry.

At the same time, the provision is not directed in any way against foreign industrial policies per se, which are solely a matter of internal government choice. Rather, it applies only when those targeting practices have the effect of increasing the export competitiveness of a particular industry in a manner that is injurious to U.S. producers. If such policies cause harm to U.S. industries, they become an appropriate matter for remedy under U.S. trade laws.

The inclusion of export targeting practices as subsidies subject to the countervailing duty law if they meet the conditions specified in the bill is not intended to prejudice the seeking of relief under other existing trade remedy laws as appropriate in the particular circumstances of each case. Rather, the countervailing duty law will provide an alternative avenue of relief from practices which have an injurious effect on domestic industries similar to more traditional forms of subsidies.

Implementation of the exporting targeting subsidy provisions would require a three-step determination by the Department of Commerce. First, there must be a government scheme or plan involving coordinated actions. Information obtained by the ITC and provided the Department of Commerce under the targeting subsidy monitoring program established under section 201 of H.R. 4784 is intended to assist the Department in making this determination in

a timely manner. A positive determination would require that the targeting policy actually involve definite actions, not merely advice or a "vision" by the government. The actions also must not be isolated or uncoordinated; rather, they must be integrated into a reasonably coherent plan or scheme. While a showing of specific intent is unworkable given the unlikelihood of available evidence, the "plan or scheme" requirement is designed to ensure that the law deals with purposeful targeting and not with discrete forms of government activity.

Second, the Department must determine that targeting practices are involved. Current countervailing duty law specifically addresses only those subsidies which involve a cash transfer to the particular industry from the government treasury, such as grants, loans, or certain tax benefits. The inclusion of actions such as those listed under section 771(5)(B)(i) as added by the bill supplement these more traditional forms of subsidies with practices which, when part of a government plan or scheme, have a subsidizing effect similar to financial assistance in assisting a specific enterprise or industry to become more export competitive. Export targeting subsidies may include forms of cash assistance covered by present countervailing duty law. However, the provision is directed primarily to the more sophisticated, less direct techniques of subsidizing which governments have resorted to as more traditional export subsidy practices are prohibited under international rules. The listing of targeting practices under subparagraph (B)(i) is purely illustrative and not exhaustive since it is not possible to anticipate the full scope of actions that governments may utilize to achieve the same results.

Third, the Department of Commerce must determine that the export targeting subsidy has the effect of assisting a discrete class of companies or industries to become more competitive in their export activities. The provision does not require a showing that the intent or purpose of the export targeting subsidy is to improve the competitiveness of a foreign industry in the U.S. market. A determination of motivation would be extremely difficult to make and subject to judicial challenge that would reduce the prospects for timely relief. Rather, the *effect* of the government plan or scheme must be to promote export competitiveness in a manner that is injurious to U.S. industry.

As in the case of export and domestic subsidies covered by present law, the types of actions envisioned as export targeting subsidies would not be countervailable unless they were bestowed upon a specific enterprise or industry or group thereof. Such practices which are generally available to industries within the country would not be covered within the definition of export targeting subsidies under subparagraph (B)(i).

Finally, no countervailing duty would be imposed on export targeting subsidies unless the ITC determines that the subsidized imports of the merchandise cause or threaten material injury to the U.S. industry, except in cases where the injury test does not apply to the country involved under present law. While individual targeting actions may have only a marginal impact, their cumulative effect may create an export competitive advantage which is injurious to the U.S. industry.

In determining the value of a targeting subsidy, section 771(5)(B)(ii) would require the Department of Commerce to use a method of calculation which reflects as accurately as possible the full benefits of the subsidy to the beneficiary enterprise or industry over the period during which the subsidy has an effect, rather than solely the cash cost of the subsidy to the government. This method is necessary for making a realistic assessment of the actual subsidy level in targeting cases, since many of the practices may not involve a simple cash transfer and their cumulative benefit may be greater than the current monetary value of an individual practice. For example, closing the home market to foreign competition or suspending antitrust laws may yield profits from higher prices and economies of scale that confer substantial competitive advantages to an industry that would not be offset under the current method of assessing benefits and would neither deter the foreign practices nor remedy the injury to U.S. industry. Depending on the circumstances of the particular case, the assessment of the full benefit of the subsidy could include the effect of subsidies which were bestowed prior to the period of importation but which are still having an effect on the imports of the particular merchandise.

Concerns have been expressed that certain U.S. Government practices (for example, investment tax credits; "spillover" benefits of defense and space research and development programs to the computer, commercial aviation, and spacecraft industries; financing of agricultural price supports; and measures to promote formation of export trading companies) may become subject to mirror legislation in foreign countries imposing countervailing duties against U.S. exports. It is highly questionable however, that such practices would constitute targeting as defined in subparagraph (B)(i), which would require a government plan or scheme consisting of coordinated actions assisting a specific industry to become export competitive in a manner which is injurious to foreign producers. The effect of such practices on sales in third country markets is not within the scope of the injury test as defined in present law or in the bill.

NATURAL RESOURCE SUBSIDIES

Present law

Any domestic subsidy described in section 771(5) may be subject to a countervailing duty action if it is provided or required by government action to a specific enterprise or industry, or group of enterprises or industries. Thus, a domestic subsidy involving natural resources may be countervailed, if it meets the specific industry test and is a subsidy of the kind described in section 771(5).

Explanation of provision

Section 105(a)(1) of H.R. 4784 further amends the definition of subsidy in section 771(5) to include a separate category of "natural resource subsidies" as a new subparagraph (C) within the list of government programs subject to countervailing duties. This provision addresses government price control mechanisms or regulations which grant a lower price to domestic manufacturers for basic resource products, such as energy, than the export price or fair

market value. If such government programs meet certain criteria, products manufactured with the use of such subsidized resources may be subject to countervailing duties.

Under new section 771(5)(C)(i), a natural resource subsidy exists whenever a government-regulated or controlled entity sells natural resource products internally to its own producers at prices which, by reason of such regulation of control, are lower than the export price or the fair market value in the exporting coungry, whichever is appropriate (as determined by subparagraph (C)(ii)). Two additional conditions must also be met. First, the internal price must not be one which is freely available to U.S. producers for purchase and export to the U.S. market. Second, the resource product, as measured by the export price or fair market value, must constitute a significant portion of the production costs of the final product that is the subject of the investigation. This limitation is intended to ensure that the subsidy test would not apply to products where the resource component is a minor factor. However, for products such as cement, carbon black, or fertilizers, where the resource component as measured by the export price or fair market value (whichever is appropriate) is significant, the Committee intends for this provision to apply.

Under subparagraph (C)(iii), the level of a natural resource subsidy for purposes of assessing the duty is the difference between the domestic price and the export price of the natural resource product; except that, in cases where there are no significant exports or where the export price is distorted by government manipulation, the administering authority must measure the subsidy by comparing the domestic price to the "fair market value"—the price that would normally apply in an arms length transaction absent government regulation or control. Various guidelines are set forth to govern this fair market value determination; the determination would take into account such factors as the general world price and the U.S. price, but would also take into account any comparative advantage in the exporting country as well as such country's access or lack of access to export markets.

Reasons for change

The purpose of adding a specific provision to address the problem of natural resource subsidies is to discourage the growing use of two-tiered pricing arrangements and other below cost pricing structures by resource rich countries. These policies have the unwanted effect of subsidizing their domestic producers by affording them preferential or below market rates for resource products. The Committee is aware of recent decisions by the Department of Commerce to the effect that pricing policies of this sort did not constitute subsidies because in those cases such prices were generally available to all domestic producers. However, the Committee believes that resource pricing policies of the type described in this provision should constitute prohibited subsidies even where nominally available to all industrial users, at least in cases where the resource in question comprises a significant portion of the final product.

The Committee believes that policies of the type addressed by this natural resource rule are subsidies within the meaning and

spirit of the GATT and the Agreement on Subsidies and Countervailing Measures. Although the GATT recognizes a country's right to exercise control over its natural resources, many two-tiered pricing schemes distort prices to such a degree that the policies go beyond internal control of resources but rather provide a substantial subsidy to domestic production. To the extent that these policies prove injurious to U.S. industry, the Committee believes they should be explicitly proscribed by the countervailing duty law.

New section 771(5)(C)(ii) provides for two methods of measuring the subsidy level; the export price and, in cases where there are no significant exports or the export price is distorted, the fair market value. For some products, however, both tests are likely to yield reasonably similar results. Some resource products, such as petroleum, tend to have a reasonably uniform world price and countries that practice two-tier pricing may export at the general world price. In such cases, a fair market value determination is likely to yield similar results to an export test. For other products, however, prices may vary a great deal from market to market, and a realistic fair market value finding would have to assess such factors as the comparative advantage of the resource-producing country and its access or lack of access to lucrative export markets. Comparative advantage does not, in this context, refer to artificial advantages imposed through government control or regulation, since this would have the effect of negating the entire provision, but refers instead to any cost advantages enjoyed by such country by virtue of indigenous factors such as abundant supplies or lower production costs (including wage rates).

Implicit in the provision is the principle that a country rich in natural resources might have a natural comparative advantage over other countries and could therefore establish export and domestic prices below the general world price and not be engaging in a subsidy practice. The natural resource provision would apply only where a two-tiered pricing test or a fair market value test (whichever is appropriate) shows some form of subsidy to domestic producers.

Subparagraph (C)(ii), as amended by the Committee, requires that prior to fixing the level of subsidy the Department of Commerce must determine whether there are significant exports of the resource product or whether the export price is distorted (significantly higher or lower than market prices in the relevant market) by reason of government manipulation. If there are no significant exports, or if distortion is found, the fair market value test would apply. The Committee amended the provision as introduced to apply the fair market value test if there are no "significant" exports, rather than no exports at all, or if the export price is distorted. In using the term "significant," the Committee intends to prevent use of the export price as the benchmark for measuring the subsidy level where the natural resource product has been exported only in small amounts in isolated instances rather than in ordinary commercial quantities as a normal export activity.

The question of export price distortion is a question of fact, and will depend upon an assessment of all the surrounding circumstances. Export prices may be set artifically high by government regulation to gain higher foreign exchange earnings, or may be ar-

tificially low to maintain full employment. These are only two examples of why price-distorting government manipulation may be occurring, and there may be other factors which could underlie such a finding. However, this assessment must be made by the Department of Commerce on the basis of all available information.

The Committee intends that in making price determinations and comparisons under the natural resource provision—with respect to domestic prices, export prices, or any prices used to determine fair market value—the administering authority shall not include costs incident to transportation and handling required to move the resource product from its point of production to the domestic or foreign destination. In other words, all natural resource prices to be used in making appropriate findings under this subsection shall be the prices exclusive of any transportation costs, so that comparisons are based on the respective prices for the resource product itself, exclusive of extraneous costs. Where prices are available only on a delivered basis and actual transportation costs are not readily calculable, the administering authority shall make reasonable estimates of such costs. It is the Committee's understanding that the process of adjusting prices to exclude transportation costs would be consistent with current practice under both the countervailing duty and antidumping laws.

The term "natural resource product" is not defined in the bill. The Committee clearly intends it to apply to basic energy products, such as petroleum, petroleum products (such as fuel oil), and natural gas. In addition, however, the Committee believes that the definition should be left flexible enough to apply in appropriate circumstances to other natural resources if they are the subject of a two-tiered or below fair market value government pricing scheme and are a significant portion of the resulting manufactured product. Moreover, the term is broad enough to apply to cases where the government pricing scheme applies to different stages of processing or refinement of the basic resource product. In the energy area, for example, there is often a high degree of interchangeability between basic petroleum products and products at higher stages of refinement. The determination of whether the natural resource provision applies to products at higher stages of refinement would depend upon how far the government regulation or control actually extends. However, the provision is not intended to apply automatically to all items, regardless of the stage of manufacture, simply because they were originally derived from natural resources. The Committee's major concern is with government price control schemes affecting the initial distribution of resource products which favor resource-intensive domestic producers.

UPSTREAM SUBSIDIES

Present law

Section 771(5) defines the term subsidy as having the same meaning as the term "bounty or grant" as that term is used in section 303 of the Tariff Act of 1930. This term has never been explicitly defined to include or exclude subsidies bestowed on products at prior stages of manufacture or production. The definition of domestic subsidies under section 771(5) for purposes of the Tariff Act does

not explicitly refer to subsidies at prior stages, but does refer to indirect subsidies. Recent decisions by the Department of Commerce have indicated some degree of coverage of subsidies at prior stages of manufacture or production.

Explanation of provision

Section 105(b) of H.R. 4784 adds a new section 771A(a) establishing new definitions and methods of calculating upstream subsidies, which are included in the list of proscribed subsidy practices set forth in section 771(5)(A) as added by section 105(a)(1) of the bill.

Upstream subsidies are defined under new section 771A(a) as the types of subsidies described in section 771(5)(A) that are paid or bestowed by a government on a product subsequently used to manufacture or produce in that country merchandise which itself becomes the subject of either a countervailing duty or antidumping investigation. If such an upstream subsidy results in a price for the intermediate product that is lower than the generally available price of that product in that country (adjusted to offset artificial depression due to any subsidies or dumping) and has a significant effect on the cost of manufacturing or producing the final merchandise, then the amount of such subsidy is included in any countervailing or antidumping duty assessed on that final product. The Committee amended new section 771A(a)(3) to clarify that the amount of upstream subsidy would be calculated as equal to the difference between the price for the intermediate product and the generally available price of that product in that country, adjusted for any artificial price depression.

The upstream subsidy provision is limited to subsidies bestowed in the same country producing the final merchandise. The Committee amended section 771(a)(1) to treat foreign countries organized into any customs union, rather than only the member states of the European Economic Community, as one country for purposes of applying the definition of upstream subsidies.

The scope of inquiry by the administering authority is limited in upstream subsidy cases. The inquiry need not extend more than one stage prior to final manufacture or production, unless information indicates that upstream subsidy practices have taken place or are occurring at an earlier stage of manufacture or production and have had or are having a substantial effect on the price of the final merchandise.

Reasons for change

New section 771A(a) establishes clearer limitations on a form of unfair trade practices which currently is subject to insufficient discipline. Although upstream subsidies are supposedly cognizable under present law, the Committee believes such practices must be dealt with more adequately by the statute. There are no clear statutory guidelines and the Department of Commerce has refrained from utilizing the law effectively against this increasingly popular form of government assistance. Including a specific rule for upstream subsidies will provide greater guidance and will also serve to notify foreign producers that they will not be insulated from liability simply because the benefit they receive is on a product at an earlier stage of manufacture. Where that benefit is passed

through and affects the final exported article, it should be treated similar to normal subsidies.

The new provision seeks to establish more meaningful discipline, yet also seeks to recognize the administrative burdens and inherent difficulties of applying the statute to such subsidies. Accordingly, the Department of Commerce normally would not be required to investigate more than one stage up the chain of commerce, since this could prove administratively burdensome. There is a limited exception for cases where information exists to demonstrate the significance of subsidies further up the chain of commerce.

Moreover, the Committee recognizes the informational difficulties that this new provision imposes. It is the Committee's intention that certain determinations, particularly those relating to the generally available price and whether it is artificially depressed by subsidies or dumping, must be made on the basis of the best available information. For these reasons, the decisions of the Department of Commerce as to these factors must be given broad latitude when it comes to judicial review. The inherent difficulties of making upstream subsidy findings must be recognized and accepted by the courts.

The conditions set forth in section 771A(a)(1) are to assure that upstream subsidy findings will only be made in cases where the benefits of the upstream subsidy are passed through to the producers of the merchandise under investigation. In this regard, two policy limits seemed sensible to the Committee. First, the requirement that the subsidy result in a lower price for the upstream product than the generally available price is intended to exclude situations where the upstream subsidy does not affect the price of the upstream product relative to unsubsidized competition. Of course, the Committee recognizes that there may be cases where the generally available price is itself artificially depressed, and in those cases a procedure for adjusting such price is required. The second policy limitation is the requirement that the upstream subsidy have a significant effect on the cost of manufacturing or producing the final merchandise. The purpose of this condition is to avoid needless investigation and verification of upstream subsidies which, although passed through to the final merchandise, are insignificant in affecting the competitiveness of that final product. Further, the duty would offset only the actual advantage to the producer of the final merchandise in using subsidized rather than generally available supplies.

The upstream subsidy provision, as amended by the Committee, treats any customs union as a single country for purposes of the provision's intra-country limitation. This exception for customs unions is justified because of the free movement of goods internally within such entities and the consequent likelihood that upstream subsidies granted by one member country will benefit production in another member country.

DOWNSTREAM DUMPING

Present law

No provision.

Explanation of provision

Section 105(b) of H.R. 4784 establishes a new section 771A(b) defining downstream dumping as occurring when a product that is subject to a countervailing duty or antidumping investigation includes materials or components which were themselves dumped (i.e., sold below their foreign market value), if the purchase price is lower than their generally available price (adjusted to offset artificial depression due to any subsidies or dumping) in the country where the final product is manufactured, and if the resulting price difference has a significant effect on the cost of manufacturing or producing the merchandise under investigation. The provision applies only to prior inter-country sales below foreign market value; it does not apply to sales within the same country which are below cost or at discount prices.

If the administering authority decides during the course of either an antidumping or countervailing duty investigation that downstream dumping is occurring or has occurred, then it must include an amount attributable to that downstream dumping as part of its calculation of any countervailing or antidumping duty on the final product. Section 771(A)(b)(2) as introduced erroneously calculated downstream dumping as an amount equal to the difference between the foreign market value and the generally available price (or the adjusted price where the generally available price is artificially depressed) of the input in the country where the final product is being produced. That amount is not a true measure of the actual dumping margin on the input and exceeds the cost advantage of using supplies that are dumped. As amended by the Committee, the downstream dumping margin would be calculated as the difference between the purchase price of the input and its generally available price adjusted, if appropriate, for artificial depression in the country producing the final product subject to an antidumping or countervailing duty investigation. In other words, the downstream dumping margin as in the case of upstream subsidies, would be the cost advantage or amount of benefit passed through to the manufacturer of the final product as a result of using supplies sold at below their fair market value rather than at the generally available price.

As with upstream subsidies, the administering authority is not required to inquire regarding the presence of downstream dumping more than one stage prior to final manufacture, unless reasonably available information indicates dumping at a prior stage that is having or has had a substantial price effect.

Reasons for change

Present law does not address the problem of downstream dumping. Yet this practice is becoming a significant irritant to U.S. business. It is becoming a more frequent occurrence throughout the world for producers in one country to receive dumped components, incorporate them into a finished product as a way of reducing costs, and then pass on the ill effects of such dumping to a third-country market. Without some effort to control this phenomenon, U.S. manufacturers will find themselves continuously disadvantaged by the price competition resulting from such practices. Down-

stream dumping is just as pernicious as normal dumping, and should not be exempted from discipline.

New section 771A(b) contains limitations on the applicability of the downstream dumping test similar to those imposed for upstream subsidies, with the same purpose—to permit additional duties only where the earlier dumping actually benefits the final product. Thus, the two conditions described with respect to upstream subsidies—relating to whether the product is sold below the generally available price and to the requirement that the prior act have a significant effect on the product's final costs—are also required in downstream dumping cases. The same procedure also applies for determining whether or not to adjust the generally available price to account for any artificial price depression caused by dumping or subsidization. This is necessary to ensure the use of a generally available price that is based on fair competition. The Committee finds that all of these conditions are necessary in order to have a rational downstream dumping standard, one which prohibits truly unfair imports but recognizes a need to avoid imposing duties if the benefits of previous dumping have not been passed through to the U.S. market.

The downstream dumping test poses similar informational difficulties to the upstream subsidy provision. As mentioned earlier with respect to upstream subsidies, the Committee recognizes that serious administrative difficulties will be encountered. In particular, it will be difficult to secure cooperation from the country that is dumping the prior-stage product in order to determine foreign market value, since producers in that country have no reason to cooperate with U.S. authorities. Also, determinations as to the generally available price in the country of export to the United States, as well as the level of artificial price depression, will be difficult to establish with much precision. For these reasons, the Department of Commerce must have broad discretion to use the best available information and its calculations should be given great latitude by the courts.

CUMULATION

Present law

Under section 771(7)(B) the ITC, in making its determination of material injury, is required to assess both the volume of imports of the merchandise subject to investigation and the consequent effects of such imports. In applying this concept, the Commission frequently practices the principle of "cumulation"—adding together imports of the same merchandise from more than one country under investigation when the facts and circumstances are deemed to warrant it. The decision to cumulate is made on a case-by-case basis and is solely within the discretion of each individual Commissioner. This practice has neither been ratified nor prohibited by statute.

Explanation of provision

Section 105(a)(2) of H.R. 4784 establishes guidelines to govern the Commission's use of cumulation in injury investigations. The provision amends the injury criteria contained in section 771(7) by adding a new subparagrph (C) to require the Commission under

certain circumstances to assess cumulatively the volume and effect of imports of like products from two or more countries subject to investigation. H.R. 4784 as introduced mandated cumulation if (1) marketing of the goods in question into the United States is reasonably coincident, and (2) there is a reasonable indication that the imports in question will have a contributing effect in causing, or threatening to cause, material injury to the domestic industry.

The Committee amended section 105(a)(2) to substitute criteria requiring cumulation if imports from two or more countries of like products subject to investigation compete with each other and with like products of the domestic industry in the U.S. market.

Reasons for change

The purpose of mandating cumulation under appropriate circumstances is to eliminate inconsistencies in Commission practice and to ensure that the injury test adequately addresses simultaneous unfair imports from different countries. Most Commissioners have applied cumulation under certain circumstances but have articulated a variety of differing criteria and conditions. However, cumulation is not required by statute. In addition, a few Commissioners have imposed conditions which do not seem justified to the Committee.

The Committee believes that the practice of cumulation is based on the sound principle of preventing material injury which comes about by virtue of several simultaneous unfair acts or practices. The Committee amended the criteria to permit cumulation of imports from various countries that each account individually for a very small percentage of total market penetration, but when combined may cause material injury. The requirement in the bill as introduced that imports from each country have a "contributing effect" in causing material injury would have precluded cumulation in cases where the impact of imports from each source treated individually is minimal but the combined impact is injurious. The Committee does intend, however, that the marketing of imports that are cumulated be reasonably coincident. Of course, imports of like products from countries not subject to investigation would not be included in the cumulation.

THREAT OF MATERIAL INJURY TEST

Present law

Sections 705 and 735 of present law require, as a precondition to imposing countervailing or antidumping duties, that the ITC determine whether an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of merchandise regarding which the administering authority has made an affirmative subsidy or dumping finding. The injury test does not apply in countervailing duty cases to dutiable imports from countries which are not parties to the GATT Agreement on Subsidies and Countervailing Measures or which have not assumed substantially equivalent obligations with the United States. The injury test also does not apply to duty-free imports

from such countries if they are not members of the GATT or the test is not otherwise required under U.S. international obligations.

"Material injury" is defined in section 771(7) as "harm which is not inconsequential, immaterial, or unimportant." In making injury determinations the ITC must consider, among other factors on a case-by-case basis, (1) the volume of imports of the merchandise, (2) the effect of such imports on prices in the United States for like products, and (3) the impact of such imports on domestic producers of like products.

In determining whether there is a threat of material injury in countervailing duty investigations, the ITC must consider such information as may be presented by the administering authority on the nature of the subsidy (particularly whether it is an export subsidy inconsistent with the GATT Agreement) and the effects likely to be caused by the subsidy. Legislative history states that export subsidies are inherently more likely to threaten injury that other subsidies. There are no other factors specified in present law for determining the threat of material injury.

Explanation of provision

Section 105(a)(2)(B) and (C) of H.R. 4784 amends section 771(7) to list various criteria which the ITC must consider, among other relevant economic factors, in making its determinations of whether there is a "threat of material injury" to a domestic industry by reason of subsidized or dumped imports. In addition investigations as under present law, the Commission must consider whether there is a possibility that the merchandise (whether or not actually being imported at the time) will be the cause of actual injury based on any demonstrable adverse trend.

Fectors for consideration would include (1) an increase in production capacity in the exporting country likely to result in a significant increase in exports of the merchandise to the United States; (2) a rapid increase in U.S. market penetration and the likelihood such penetration will increase to an injurious level; (3) the likelihood that imports will enter at prices that will have a depressing or suppressing effect on domestic prices; or (4) a substantial increase in inventories in the United States. Determinations cannot be made on the basis of mere supposition or conjecture. There must also be sufficient information existing to conclude that the threat of injury is real and that actual injury is imminent.

In determining whether there is a threat of material injury in cases involving export targeting subsidies, the Commission must consider the effect of the subsidy practices on the export competitiveness of the beneficiary and the extent to which such practices are likely to have a demonstrable adverse effect on the industry with regard to costs and availability of capital, outlays for research and development, and future investment. These constitute additional factors which the ITC must consider in determining whether the actual standards of threat of material injury are met.

Reasons for change

Present law does not contain any statutory guidance as to the factors, other than the nature of any subsidy, which the ITC should consider in determining whether an industry in the United States

is threatened with material injury by reason of imports of merchandise subject to a countervailing duty or antidumping investigation. The absence of such criteria has created uncertainty and confusion within the Commission and court challenges on what standards should apply; partly for this reason there have been relatively few cases decided by the Commission on the basis of threatened as opposed to actual material injury.

The Commission should examine all elevant factors relating to possible threat of material injury in all investigations in which it finds no present injury. The factors set forth in section 771(7) as amended by the bill are consistent with, and restate legislative history on, this term in present law as it was amended by the Trade Agreements Act of 1979. The factors listed are illustrative of the economic indicators which may be relevant, depending on the circumstances of the particular case and industry involved. As stipulated in the legislative history of the 1979 Act, determinations on the basis of threat cannot be made on the basis of mere supposition and conjecture and sufficient information must exist for concluding that the threat of injury is real and that actual injury is imminent.

The purpose of including such guidance in the statute is not to broaden or otherwise change the scope of meaning of present law or to make determinations of material injury based on threat either easier or more difficult to obtain. Rather, by restating previous legislative history in the statute, the Committee seeks to clarify and remove any misunderstanding as to Congressional intent on the standards for determining whether the current test is met.

In cases involving export targeting subsidies the Commission would be required to consider special additional factors in determining whether material injury is threatened. These factors are based upon information received by the Committee on actual private sector experience. The likelihood of unfair competition and actual injury in the future due to foreign targeting may impede the ability of the U.S. industry in the present, even before imports occur, to raise capital, to invest in plant and equipment, and to engage in research and development. However, the actual standards for determining threat of material injury would be the same as in cases not involving export targeting practices.

Loss of sales by the U.S. industry in third countries or loss of its global market share are not included as special factors for consideration in determining whether that industry faces the threat of material injury from foreign targeting. These factors are only relevant to the extent that they indicate a likelihood of imports in the U.S. market. The Committee believes that the effects of targeting in third country markets are more appropriately dealt with under other trade statutes than in laws concerned specifically with the impact of unfair competition in the U.S. market.

INTERESTED PARTY

Present law

Section 771(9) defines the term "interested party" for standing to file petitions under the countervailing duty and antidumping laws as (1) a foreign manufacturer, producer, or exporter, or U.S. importer, or a trade or business association, a majority of whose mem-

bers are importers of the merchandise; (2) the foreign government of a country producing or manufacturing the merchandise under investigation; (3) a manufacturer, producer, or wholesaler of a like product; (4) a union or group of workers representative of an industry engaged in manufacture, production, or wholesale of a like product; and (5) a trade or business association, a majority of whose members manufacture, produce, or wholesale a like product in the United States.

Explanation of provision

Section 105(a)(3) of H.R. 4784 amends section 771(9) by expanding the definition of "interested party" for standing in countervailing duty and antidumping investigations to include an association, a majority of whose members is composed of (1) manufacturers, producers, or wholesalers in the United States of a like product; (2) unions or groups of workers representative of an industry manufacturing, producing, or wholesaling a like product in the United States; or (3) trade or business associations a majority of whose members manufacture, produce or wholesale a like product in the United States.

Reasons for change

The purpose of the amendment is to broaden the class of an interested party which has standing to file petitions under the countervailing duty or antidumping laws. It would enable a coalition to file a petition on behalf of a particular industry as long as a majority of the coalition's membership consists of manufacturers, producers, wholesalers, groups of workers, or trade associations with standing under present law and representative of the particular industry producing the like product. This standing requirement would be met as long as a majority of the combined membership of the coalition individually meets the standing requirements under present law and represents the industry producing the like product. It is not necessary that a majority of the individual firms and a majority of the unions also represent the particular industry if a majority of the members of an association in the coalition are representative.

SECTION 105 (OF H.R. 4784 AS INTRODUCED).—NONMARKET ECONOMY PRICING

Under section 773(c) of present law, if an exporting country is State-controlled to an extent that sales of the merchandise in that country or to third countries do not permit a determination of foreign market value in antidumping investigations, the administering authority must determine the foreign market value on the basis of normal costs, expenses, and profits as reflected by either (1) prices at which such or similar merchandise of a non-State-controlled-economy country is sold for consumption in the home market of that country or to other countries, including the United States; or (2) the constructed value in a non-State-controlled-economy country.

Section 105 of H.R. 4784 as introduced amended section 773(c) to provide a new alternative pricing standard for determining dump-

ing margins in cases in which available information indicated to the administering authority that the relevant sector of the economy from which the merchandise is exported is State-controlled to the extent that foreign market value cannot be determined under the normal rules of section 773(a). In such cases the administering authority could determine foreign market value on the basis of the "lowest free market price" (as defined in section 773(c) as amended) of like articles in the U.S. market if that price were a competitive free market price, as an alternative to the so-called "surrogate country" test under present law.

There appears to be general consensus within the private sector, the relevant Executive branch agencies, and the Committee that the surrogate country test is unsatisfactory. The biggest problem it creates is unpredictability and lack of advance knowledge for nonmarket suppliers or U.S. importers and for the domestic industry as to which country will be selected as a surrogate for establishing foreign market value. Consequently, importers do not know what might constitute a dumped price in order to gauge their prices accordingly. Potential petitioners do not know whether it is worthwhile to file a dumping complaint since, unlike cases involving market economies, they do not have advance knowledge of the home market price of their competitors and the likelihood of a dumping finding.

The purpose of including in H.R. 4784 as introduced the lowest free market price of the article in the U.S. market as an alternative test was to provide greater certainty and less complexity for importers and potential petitioners in determining what benchmark price would apply in antidumping cases involving nonmarket economies. The Department of Commerce could distinguish individual sectors of an economy traditionally treated in entirety as either market or State-controlled for purposes of applying the dumping rules. Section 105 also required the Department of Commerce to examine all available evidence supplied by the foreign government or its suppliers in making its determination as to whether the particular sector or country is State-controlled.

However, the Committee decided in markup session to delete section 105 from H.R. 4784 as introduced. There was not consensus in the Committee that the lowest price, as opposed to an average price, for example, would be the most appropriate benchmark that would produce equitable results for both domestic industries and foreign suppliers. Some Members were concerned that a lowest free market price test might be set by very low wage, high volume suppliers and nonmarket economy countries could reduce their prices to that level bearing no relation to their actual costs of production in order to earn hard currency and still escape dumping duties. Other Members were concerned that a higher threshold, such as an average free market price, would penalize efficient foreign producers and provide absolute protection and an incentive to raise prices to domestic producers selling below the average by unjustifiably defining foreign sales below that level as automatic dumping. The Committee decided to delete the authority to distinguish economies on a sector than country-wide basis so as not to broaden the potential application of the unsatisfactory surrogate country test.

SECTION 106.—HEARINGS

Present law

Section 774(a) requires the administering authority and the ITC each to hold a hearing before making their final determinations in countervailing duty or antidumping investigations, upon the request of any party to the investigation.

Explanation of provision

The Committee amended H.R. 4784 as introduced to add a new section 106 which amends section 774(a) to create an exemption in the existing requirement for hearings by the ITC upon request before making an injury determination in any countervailing duty or antidumping investigation. If investigations are initiated under both laws within six months of each other but before a final injury determination in either case regarding the same merchandise from the same country, a hearing by the Commission during one investigation would be treated as compliance with the normal hearing requirement for both investigations. The Commission could require a hearing during each investigation in extraordinary circumstances. Such circumstances could result from a major change in the number or composition of exporters or domestic producers, for example. The Commission would also allow any party to submit additional written comment it considers relevant during investigation on which the hearing requirement has been waived.

Reasons for change

The purpose of this amendment is to reduce the unnecessary administrative burden and expense for the ITC and petitioners and other interested parties of duplicate hearings in investigations involving essentially the same factual circumstances. Opportunity would be provided through written comments to update and supplement information gathered in the first investigation as necessary to maintain current information for the injury determination in the second case.

SECTION 107.—VERIFICATION OF INFORMATION

Present law

The administering authority is required by section 776(a) to verify all information relied upon in making a final determination in any countervailing duty or antidumping investigation. In publishing the determination, the administering authority reports the procedures and methods used in verification. If verification is not possible, the administering authority uses the best information available to it for making the determination.

Verification is not required by statute in annual review proceedings under section 751. However, the administering authority normally verifies information where it believes there is a significant issue of law or fact.

Explanation of provisicn

Section 107 of H.R. 4784 amends section 776(a) to require verification of information whenever the administering authority re-

vokes a countervailing duty or antidumping duty order under section 751(c) in addition to present verification of any final determinations. The Committee amended section 107 to add a specific statutory requirement that the administering authority also verify information used in annual reviews and determinations under section 751(a) of outstanding countervailing duty and antidumping orders if verification is timely requested by an interested party. Such verification would not be required if it has occurred upon timely request in the two immediately previous annual reviews under section 751 involving the same order, finding, or notice unless good cause for verification is shown. As under present law, the administering authority will use the best information available to it as the basis for its action if it is unable to verify the accuracy of the information submitted. Good cause could be such factors as a significant issue of law or fact, changed or special circumstances, discrepancies found in previous verifications, or the likelihood of a significant impact on the result.

Reasons for change

The consequences of a revocation action are that the outstanding countervailing duty or antidumping duty order no longer exists. In such circumstances, the Committee believes it essential to protect the interests of the domestic industry by requiring that any information relied on in making such a determination be fully verified, so that duty protection will not be eliminated on the basis of erroneous information.

The Committee also believes it essential to proper enforcement of the laws that information used in determining annually the actual amount of any countervailing or antidumping duty to be assessed under outstanding orders is accurate to the extent possible. At the same time, the Committee is concerned that requiring verification in every review would result in an unnecessary additional administrative burden on the Department of Commerce or perfunctory verifications. Therefore, verification would not be required if an interested party does not request it in a timely manner, or after recent verifications have taken place unless shown to be warranted.

SECTION 108.—RELEASE OF CONFIDENTIAL INFORMATION

Present law

Under section 777, the administering authority and the ITC must maintain a record of ex parte meetings between (1) interested parties or other persons providing factual information, and (2) the person charged with making the determination and any person charged with making a final recommendation to that person. This record is included in the record of the investigation.

These agencies may disclose, in a form which cannot be used to identify operations of a particular person, any confidential information received during a proceeding and any information not designated as confidential by the person submitting it.

Information submitted to the administering authority or the ITC designated as confidential cannot be disclosed to any person (other than those directly concerned with carrying out the investigation) without the consent of the person submitting it unless pursuant to

a protective order. If the administering authority or the ITC determines that designation of information as confidential is unwarranted, they must notify the person submitting the information and request an explanation of the reasons. Unless the person is persuasive or withdraws the designation, the information will be returned.

Both agencies are permitted to make confidential information available under a protective order upon receipt of an application which describes the information requested and reasons for the request. If the administering authority denies any request, or the ITC denies a request for confidential information in support of the petitioner concerning the domestic price or cost of production of the like product, application may be made to the Court of International Trade for an order directing that the information be made available. The Court may issue such an order subject to appropriate sanctions. Legislative history states the expectation that disclosure generally will be made only to attorneys who are subject to disbarment from practice before the agency.

Explanation of provision

Section 108 of H.R. 4784 amends section 777 in several respects. First, it amends subsection (b) to permit release of confidential information to an officer or employee of the U.S. Customs Service who is directly involved in conducting an investigation regarding fraud under Title VII. Second, subsection (b) is also amended to provide a more orderly procedure for requesting confidential treatment and obtaining release of information that is granted such treatment. Finally, subsection (c)(1)(B) is amended to preclude any distinction between corporate and retained counsel in the regulations of the ITC and the administering authority governing issuance of protective orders.

With respect to the new procedure for releasing confidential information, the administering authority and the Commission must require that information for which confidential treatment is requested be accompanied by a nonconfidential summary (or an explanation of why such a summary is not possible) and by a statement either permitting or opposing release of such information under administrative protective order.

Reasons for change

Allowing the release of confidential information for a Customs Service fraud investigation is intended solely to prevent an unintended restriction from continuing. The reason for this change is to improve administration of the customs laws by increasing the likelihood that parties allegedly engaging in civil fraud will be scrutinized.

Permitting the standardized release of confidential information is intended to reduce administrative burdens and to expedite decisionmaking regarding access to confidential information. Under present law there is no standard procedure for affecting release, and decisions are normally made on an ad hoc basis. While the Committee realizes that each request for confidential treatment must be examined on its own merits, a standardized procedure will help to simplify and bring more order to the system, reduce time-

consuming and costly filings by parties, and encourage more timely decisions regarding release of information.

The Committee agreed to preclude any distinction between corporate and retained counsel in agency regulations because it believes that no basis exists in law or policy for treating these two classes of individuals separately. Agency regulations have drawn such a distinction because of fears that release of information to in-house counsel would create too great a risk of release of such information to other operating elements of the corporation. This distinction was supported by language in the legislative history to the 1979 amendments. However, the Committee now believes that appropriate safeguards exist to protect against release within the corporation by in-house counsel. First, the release of information under protective order is permissive and the agencies may weigh the risk of release in a particular case. Second, corporate attorneys are subject to disciplinary proceedings and possible disbarment for release of information which is subject to protective order. Thus, the Committee sees no need to create an outright ban on disclosure to in-house counsel. The agencies will be expected, however, to enforce effective sanctions against unauthorized release and to prevent release if a risk of disclosure is demonstrated.

SECTION 109.—SAMPLING AND AVERAGE IN DETERMINING U.S. PRICE AND FOREIGN MARKET VALUE

Present law

For purposes of determining foreign market value only in antidumping investigations, section 773(1) authorizes the administering authority to use averaging or sampling techniques whenever a significant volue of sales is involved or a significant number of price adjustments is required, and to decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise. Legislative history states that "insignificant" means individual adjustments having an ad valorem effect of less than 0.33 percent and groups of adjustments having a cumulative ad valorem effect of less than 1.0 percent. Adjustments also should not be disregarded if they have, individually or cumulatively, a meaningful effect on competition even though they have a small ad valorem effect.

Explanation of provision

Section 109 of H.R. 4784 adds a new section 777A to expand the instances in which the administering authority may use sampling and averaging techniques. Section 777A authorizes the administering authority, in determining United States price or foreign market value in antidumping investigations under section 772 and 773 or in carrying out annual reviews of outstanding antidumping or countervailing orders under section 751, to use averaging or generally recognized sampling techniques whenever a significant volume o sales is involved or a significant number of adjustments to price is required, and to decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

The authority to select appropriate samples and averages would rest exclusively with the administering authority, but are to be representative of the transactions under investigation.

Reasons for change

The purpose of section 109 is to reduce the costs and administrative burden on the Department of Commerce of determining dumping margins and of reviewing annually the amount of countervailing and antidumping duties to be assessed under outstanding orders. Under present law the Department of Commerce must ascertain the U.S. price of each individual transaction in an antidumping investigation and review countervailing duty and dumping margins annually on an entry-by-entry basis for each product and country subject to an order. By permitting the Department to use generally recognized averaging and sampling techniques and to disregard insignificant adjustments in all duty assessments, as it may currently for determining foreign market value, the Committee seeks to maximize efficient use of limited staff resources and to expedite processing of individual cases and annual reviews without loss of reasonable fairness in the results.

SECTION 110.—ELIMINATION OF INTERLOCUTORY APPEALS

Present law

Title V of the Tariff Act of 1930, as amended by Title X of the Trade Agreements Act of 1979, provides for judicial review of countervailing duty and antidumping duty proceedings in the Court of International Trade (CIT). Under section 516A, certain determinations by the administering authority are reviewable by the CIT prior to the issuance of a final determination or the publication of a final order. In other words, certain interlocutory determinations are reviewable immediately even though the administrative proceeding has not been concluded.

Those interlocutory findings which may be reviewed immediately under section 516A(a)(1) include a negative preliminary determination by the administering authority under sections 703(a) or 733(a) and a determination that a case is "extraordinarily complicated" under sections 703(c) or 733(c). Also reviewable on an interlocutory basis under section 516A(a)(1) and (a)(2)(B) are any annual review determinations under section 751.

Explanation of provision

Section 110 of H.R. 4784 amends section 516A(a)(1) to prohibit interlocutory review of "extraordinarily complicated" determinations under sections 703(c) or 733(c) or negative preliminary determinations under sections 703(b) or 733(b). Instead, these findings would be fully reviewable when review is sought of a final affirmative or negative determination under section 516A(a)(2) and would be subject to reversal and possible remand by the CIT along with other interlocutory determinations made prior to a final determination.

Section 110 also amends section 516A(a)(2) to prohibit interlocutory appeals of determinations made during an annual review proceeding under section 751. Such appeals would instead occur after

a final determination has been made by the administering authority or the ITC.

Finally, section 110 amends section 516A to clarify the treatment of certain types of final determinations and to clarify when judicial review of these determinations should occur. In particular, section 110 amends section 516A(a)(2)(B) to ensure that any part of a final affirmative determination by the administering authority which specifically excludes any company or product may, at the option of the appellant, be treated as a final negative determination and may be subject to appeal within 30 days of publication of the final determination by the administering authority. However, other negative aspects of an affirmative determination would be appealable within 30 days after publication of a final order, and if an appellant so chooses, appeal of those portions of an affirmative finding which exclude a product or a company may also be appealed within 30 days of publication of a final order, instead of within 30 days of the determination as described above. A new paragraph (3) is also added to clarify that a final affirmative determination by the administering authority may be contested when an appeal is based on a negative determination by the Commission that is predicated on the size of the dumping margin or net subsidy.

Reasons for change

The purpose of eliminating interlocutory judicial review is to eliminate costly and time-consuming legal action where the issue can be resolved just as equitably at the conclusion of the administrative proceedings. Since no irrevocable harm occurs to any party until after the agencies have completed their investigations and have either issued or failed to issue a final antidumping or countervailing duty order, the interests of all parties can be protected by preserving their rights to appeal at that time. The Committee received numerous objections from practitioners and representatives of both domestic and importing interests who find the many interlocutory appeals to be costly and unnecessary. When Congress expanded judicial review as part of the Trade Agreements Act of 1979, it was felt that interlocutory review would expedite provision of judicial relief, might help to perfect the record, and would lead to better final determinations with fewer errors. However, the cost delay of judicial review in the CIT are such that the benefits of interlocutory actions are outweighed by the attendant burdens.

The purpose of clarifying when negative portions of an affirmative determination may be reviewed is to permit appeals of determinations which exclude entire companies or products on the timetable most acceptable to the appealing party. The Committee is aware of the decision of the CIT in *Bethlehem Steel Corp.* v. *United States* (Slip Opinion 83-97), in which the court refused to permit an appeal of certain negative findings (with respect to certain products or companies) that were part of an overall affirmative determination in accordance with the timetable for appeal of affirmative determinations. The court recognized that its ruling might lead to "undesirable piecemeal" litigation, but said that the correction must be made by "legislative fiat." The purpose of the Committee's change is to permit an election by appellants of when to appeal such determinations and thereby to prevent piecemeal litigation.

SECTION 201.—ESTABLISHMENT OF TRADE REMEDY ASSISTANCE OFFICE AND TARGETING SUBSIDY MONITORING PROGRAM IN THE UNITED STATES INTERNATIONAL TRADE COMMISSION

Section 201 amends part 2 of title II of the Tariff Act of 1930 by adding new section 339 and amending section 340 to establish a Trade Remedy Assistance Office and a Targeting Subsidy Monitoring Program in the ITC.

TRADE REMEDY ASSISTANCE OFFICE

Present law

No provisions.

Explanation of provision

New section 339 of the Tariff Act of 1930 as added by section 201 of H.R. 4784 establishes in the ITC a Trade Remedy Assistance Office. This Office would be a centralized location within the government to provide full information to the public, upon request, concerning the remedies and benefits available under the trade laws and the procedures and dates for filing petitions and applications under such laws. This assistance would apply to petitions for relief under various provisions of the Trade Act of 1974, the Trade Expansion Act of 1962, and the Tariff Act of 1930. It would therefore cover petitions pertaining to all normal forms of trade remedies, such as import relief (section 201 of the Trade Act of 1974), relief from foreign import restrictions and export subsidies (section 301 of the Trade Act of 1974), relief under the antidumping and countervailing duty laws (Title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979), and relief from unfair practices in import trade (section 337 of the Tariff Act of 1930).

New section 339 also imposes a requirement on each agency responsible for administering these laws to provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications under such statutes (other than those which, in the opinion of the agency, are frivolous). The term "eligible small business" is defined as any business concern which, in the agency's judgment, has, by virtue of its small size, neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for trade law remedies and benefits. In making this determination, the agency may consult with the Small Business Administration and must consult with other agencies that have provided such assistance. Agency decisions on whether a business concern is eligible for assistance are not reviewable by any court or other agency.

REASONS FOR CHANGE

The establishment of a Trade Remedy Assistance Office is essential in order to reduce the costs of filing trade remedy petitions and to minimize uncertainties about the types of remedies that should be pursued in particular situations. Although many large firms and industries are quite familiar with the complex maze of laws and

procedures available to them, a number of smaller companies have been frustrated by these complexities.

The Committee is aware of several instances where small business groups were frustrated by their lack of resources and unfamiliarity with the various petitioning procedures. This problem is most acute in sectors with a large number of small firms, such as certain types of agriculture. The Trade Remedy Assistance Office will be able to provide basic advice as to the appropriate laws for these groups to pursue—advice as to which agencies administer which laws and what the filing requirements and other procedural steps are for seeking relief. The Committee believes that a single office to disseminate information about U.S. trade laws and provide basic advice about the types of action to pursue would represent a meaningful improvement over the present situation.

The statutory requirement that each agency responsible for administering a particular law provide further assistance to deserving small business entities is also a significant improvement over present law. Although some agencies do provide help to small business petitioners, there are inconsistencies in practice and there are no formal procedures. The Committee intends a mechanism whereby the agency decides, upon request, that a paticular entity lacks the internal resources and financial ability to obtain qualified outside assistance (retained counsel). Thereafter, if the agency finds that the request for relief is not frivolous, it would assist in the preparation and filing of the necessary petitions. This assistance would include the legal and economic information support (including any non-confidential data available to the agency) necessary to file, but would not include advocacy services. Since the agency must remain in the role of investigator and fact-finder, it would not be appropriate for it to take a partisan role in the dispute.

TARGETING SUBSIDY MONITORING PROGRAM

Present law

No provisions.

Explanation of provision

Section 340 of the Tariff Act of 1930 as amended by section 201 of H.R. 4784 requires the ITC to establish and implement a continuing program to monitor and analyze the industrial plans and policies of foreign countries in order to discover whether targeting subsidies are being planned or have been implemented. Targeting subsidies would be those practices defined in section 771(5)(B) as added under section 105(a)(1) of the bill. The Commission would give priority to those countries and product sectors in which the United States has significant economic or commercial interests. In determining these priorities, the Commission would consult with other Federal agencies and solicit the views and comments of the public. The Commission must regularly report the information resulting from the program to the administering authority and make non-confidential information available to the public.

Each agency of the United States is directed to provide the ITC, upon its request, such information as the Commission considers necessary or appropriate to carry out its functions under this pro-

gram. Classified information must be included if the provider agency is satisfied that the Commission will enforce appropriate measures to prevent its loss or unauthorized disclosure.

Reasons for change

The purpose of establishing a targeting monitoring program in the ITC is to develop information and expertise on a continuing basis about planned or actual industrial plans and policies of foreign countries in order to forewarn U.S. industries and the U.S. Government about possible export targeting subsidies. In the past, knowledge of and response to such practices has often come about when their adverse impact is actually experienced by a U.S. industry in lost competitiveness. Development of better information about foreign industrial policies in their incipient stages complements the explicit recognition under section 105 of the bill of export targeting subsidies as countervailable under U.S. law. The program would place domestic industries in a better position to anticipate potential targeting problems and to seek an appropriate remedy under the countervailing duty or other trade laws before experiencing an actual injurious impact. The ITC would report program information regularly to the administering authority and make available non-classified portions to the public in order to facilitate this process.

At the present time several government agencies, in particular the Department of Commerce, the ITC, the Office of the U.S. Trade Representative, and the Central Intelligence Agency, are gathering and analyzing information about foreign industrial policies and targeting practices. However, section 340 as amended would consolidate and coordinate these activities in one agency and address the need to correlate the information in a central place in a timely fashion. The Committee believes the ITC is the most appropriate agency for this function since its independent status would endure objective, nonpartisan analysis absent of political or policy considerations. The Commission also has comprehensive commodity expertise and extensive experience in examining and reporting on industry policies and programs on a thorough and factual basis. In order to avoid duplication and to maximize the use of resources, other agencies are directed to provide relevant information they collect to the ITC upon its request. The Committee expects the ITC and individual agencies involved will work out mutually satisfactory security measures that will enable the Commission to obtain on a regular basis whatever classified information is necessary or appropriate for a comprehensive and consolidated program.

While the Committee intends that the program monitor and examine targeting practices world-wide, it recognizes that staffing and other budgetary considerations require establishment of priorities for analysis in order to avoid excessive additional costs. The ITC would consult other agencies and private sector interests to determine the industries and countries of greatest U.S. economic and commercial interest for this purpose. However, the Committee does not intend that the program be used to obtain and develop evidence at the behest of individual domestic industries which lack adequate information but believe a targeting problem exists. Rather, the ITC should conduct as comprehensive a monitoring

program as possible and establish it own priorities based on available resources and extensive consultations. The Committee will review the operation and resource requirements for this program as part of its annual budget oversight and authorization responsibilities for the Commission.

SECTION 202.—ADJUSTMENTS STUDY

Present law

The amount of dumping duties imposed on imported merchandise is equal to the difference, if any, between the foreign market value and the United States price. "United States price" includes the terms "purchase price" and "exporter's sales price." Purchase price is the price at which merchandise is purchased or agreed to be purchased prior to date of importation from the manufacturer or producer for exportation to the United States. It may be used if transactions between related parties indicate the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer. "Exporter's sales price" is the price at which merchandise is sold or agreed to be sold in the United States before or after importation, by or for the account of the exporter.

"Foreign market value" describes the value against which the U.S. price is compared in assessing dumping duties. It includes the terms home market price, third country price, and constructed value. Either third country price or constructed value are use if the exporter's home market prices are inadequate or unavailable to calculate fair market value, third country prices normally being preferred if presented in a timely manner and adequate to establish foreign market value.

Various statutory adjustments are provided for to obtain comparability of prices, for example, to account for differences in circumstances of sale, quantities sold, or qualitative characteristics.

Explanation of provision

Section 202 of H.R. 4784 requires the Secretary of Commerce to undertake a study of current practices that are applied in making adjustments to purchase prices, exporter's sales prices, foreign market value, and constructed value in determining dumping duties under section 772(d) and (e) and section 773. The study would include, but not be limited to, (1) a review of current adjustment, (2) a review of private sector comments and recommendations regarding adjustments that were made at Congressional hearings during the 98th Congress, and (3) the manner and extent to which such adjustments lead to inequitable results. The Secretary must complete the study within one year after the date of enactment of the bill and submit a written report to the Congress. The report would contain whatever recommendations the Secretary deems appropriate on the need and means for simplifying and modifying current adjustment practices.

Reasons for change

The Subcommittee on Trade received many suggestions from the private sector during its hearings on trade remedy law reform for changes in the various adjustments which the Department of Com-

merce may make under present law to the wholesale prices of transactions being compared for purposes of determining dumping margins. Many of these adjustments were discussed extensively during consideration of amendments to the antidumping law in 1979, but remain controversial. The adjustment process is also extremely complex, having developed over the the years through accretion rather than logical and comprehensive analysis.

The overall basic goal of adjustments should be a fair and objective basis for achieving price comparability which does not give either domestic or foreign interests an advantage in the calculation of dumping margins. There is also a need to simplify the adjustment process and make it a coherent whole with a view to achieving greater predictability of results and savings in the time and expense of investigation and administration. Consequently, the Committee believes an indepth study of all present practices and their results and a comprehensive anaylsis of the implications of the various proposls for change is necessary, rather than a piecemeal approach, before any legislative or administrative action is taken in this area.

SECTION 203.—EFFECTIVE DATES

Section 203 sets forth the effective dates of the various provisions and amendments in the Trade Remedies Reform Act of 1984. The amendments made by sections 101, 103, 104, 105, and 109, concerning practices and procedures involved in countervailing duty and antidumping investigations, would apply to investigations initiated on or after the date of enactment of the Act. The amendments made by section 110 concerning judicial review would apply with respect to civil actions pending on, or filed on or after, the date of enactment of the Act. Section 339 of the Tariff Act of 1930 as added by section 201 of the Act, concerning establishment of a trade Remedy Assistance Office, would take effect on the 90th day after the date of enactment. All other provisions of H.R. 4784 as reported would take effect on the date of enactment of the Act.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 4784 was ordered favorably reported by the Committee with amendments by a nonrecorded vote.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee has concluded, as a result of extensive hearings held by the Subcommittee on Trade and indepth review of the issues involved, that amendments of the countervailing and antidumping duty laws are necessary to improve their operation and to address current forms of unfair trade practices for the reasons described above under the Background and Purpose of the bill.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Commission by the Committee on Government Operations with respect to the subject matter contained in this bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3) (B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 4784, as amended, does not provide any new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rule XIII and clause 2(1)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 4784, and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 23, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4784, the Trade Remedies Reform Act of 1984, as amended and ordered reported by the Committee on Ways and Means.

The bill would amend countervailing duty and antidumping laws and create a Trade Remedy Assistance Office within the International Trade Commission. Specifically, the bill would clarify the law with relation to likely sales and certain leasing arrangements; amend the authority to terminate or suspend countervailing duty or antidumping investigations; strengthen guidelines for self-initiation of antidumping investigations and require further monitoring by the Department of Commerce of imports once a domestic industry has proven injurious dumping; amend certain definitions of terms and special rules pertaining to the scope of antidumping and countervailing duty investigations and determinations of material injury; allow an exemption in the existing requirement for hearings by the International Trade Commission to prevent duplicate hearings; set new standards for the verification and release of information; allow the use of sampling and averaging techniques in investigations; preclude judicial review until final action has been taken; establish a Trade Remedy Assistance Office within the ITC; require the ITC to establish and implement a program to monitor and analyze the industrial plans and policies of foreign countries; and require a Department of Commerce study of its price adjustment practices.

H.R. 4784 will have no effect on tax expenditures. While the bill would have no direct effect on revenues (i.e., duty and tariff schedules are not altered), revenue could increase by a negligible amount as a result of the tightening of the countervailing duty and

antidumping investigation process. If the tightened process results in more cases requiring the imposition of such duties, then revenues would be higher.

With best wishes.

Sincerely,

RUDOLPH G. PENNER.

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 4784, as amended, which would have no direct effect on revenues but could increase revenues somewhat as a result of tightening the antidumping and countervailing duty investigation process, would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * * * *

TITLE III—SPECIAL PROVISIONS

* * * * * * *

PART II—UNITED STATES TARIFF COMMISSION

SEC. 339. TRADE REMEDY ASSISTANCE OFFICE.

(a) There is established in the Commission a Trade Remedy Assistance Office which shall provide full information to the public, upon request, concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under the law.

(c) For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible

small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to relief caused by import competition);

(B) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(E) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); and

(F) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

[SEC. 340. DOMESTIC VALUE—CONVERSION OF RATES.

[(a) CONVERSION OF RATES BY COMMISSION.—The commission shall ascertain, with respect to each of the ad volorem rates of duty, and each of the rates of duty regulated by the value of the article, specified in this Act, an ad valorem rate (or a rate regulated by the value of the article, as the case may be) which if applied upon the basis of domestic value would have resulted as nearly as possible in the imposition, during the period from July 1, 1927, to June 30, 1929, both dates inclusive, of amounts of duty neither greater nor less than would have been collectible at the rate specified in this Act applied upon the basis of value defined in section 402 of the Tariff Act of 1922.

[(b) REPORT TO CONGRESS BY COMMISSION.—The commission shall, as soon as practicable, but in no event later than July 1, 1932, submit a report to the Congress setting forth the classes of articles with respect to which the conversion of rates has been made, together with the converted rates applicable thereto.

[(c) DATA TO BE FURNISHED BY SECRETARY OF TREASURY AND SECRETARY OF COMMERCE.—To assist the commission in carrying out the provisions of this section, the Secretary of the Treasury and the Secretary of Commerce are authorized and directed to furnish to the commission, upon request, any data or information in the possession or control of their respective departments relating to the importation, entry, appraisement, and classification of merchandise and the collection of duties thereon.

[(d) DEFINITIONS.—When used in this section—

[(1) The term "domestic value," applied with respect to imported merchandise, means

[(A) the price at which such or similar imported merchandise is freely offered for sale, at the time of exporta-

tion of the imported merchandise, packed ready for delivery, in the principal market of the United States to all purchasers, in the usual wholesale quantities and in the ordinary course of trade, or

[(B) if such or similar imported merchandise is not so offered for sale in the United States, then an estimated value, based on the price at which merchandise, whether imported or domestic, comparable in construction or use with the imported merchandise, is so offered for sale, with such adjustments as may be necessary owing to differences in size, material, construction, texture, and other differences.

[(2) The term "rate of duty regulated by the value of the article" means a rate of duty regulated in any manner by the value of the article, and includes the value classification by which such rate is regulated.]

SEC. 340. TARGETING SUBSIDY MONITORING PROGRAM

(a) The Commission shall establish and implement a continuing program to monitor and analyze the industrial plans and policies of foreign countries and instrumentalities in order to discover whether targeting subsidies (as defined in section 711(5)(B)) are being planned or have been implemented.

(b) In implementing the program, the Commission shall give priority to those countries and instrumentalities and product sectors in which the United States has significant economic or commercial interests. The Commission shall consult with other appropriate Federal agencies and solicit the views and comments of the public in determining priorities for purposes of the preceding sentence.

(c) The Commission shall regularly report the information resulting from the program to the administering authority (as defined in section 771(1)) and shall make such information (other than that requiring confidential treatment) available to the public.

(d) Each agency of the United States shall provide to the Commission, upon its request, such information as the Commission considers to be necessary or appropriate for purposes of carrying out this section. Classified information shall be provided to the Commission under this subsection if the provider agency is satisfied that the Commission will enforce appropriate measures to prevent the loss or unathorized disclosure of the information.

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TITLE IV—ADMINISTRATIVE PROVISIONS

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PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

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SEC. 514. *FINALITY OF DECISIONS;* PROTESTS.—

(a) FINALITY OF DECISIONS.—Except as provided in Subsection (b) of this section, *section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties as de-*

fined in section [771(9)(C), (D), and (E) of this Act] *771(9)(C), (D), (E), and (F) of this Act*, section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 520(c) of this Act,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade *in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States* Court of International Trade *has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.*

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEEDINGS.

(a) REVIEW OF DETERMINATION.—

[(1) REVIEW OF CERTAIN DETERMINATIONS.—

[(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

[(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

[(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

[(iii) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factu-

al findings or legal conclusions upon which the determination is based.

[(B) TEN-DAY REVIEW.—Within 10 days after the date of publication in the Federal Register of notice of—

[(i) a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated, or

[(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contenting any factual findings or legal conclusions upon which the determination is based.]

(1) REVIEW OF CERTAIN DETERMINATIONS.—Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 702(c) or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the Commission, under section 751(b) of this Act, not to review a determination based upon changed circumstances, or

(C) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after [the date of publication in the Federal Register of]—

[(i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

[(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),]

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

[(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

[(i) Final affirmative determinations by the Secretary and by the Commission under section 303, or by the administering authority and by the Commission under section 705 or 735 of this Act.

[(ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 303, 705, or 735 of this Act.

[(iii) A determination, other than a determination reviewable under paragraph (1), by the Secretary, the administering authority, or the Commission under section 751 of this Act.

[(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation.

[(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.]

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 705 or 735 of this Act, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 705 or 735 of this Act, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 751 of this Act.

(iv) A determination by the Administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning undelying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(3) EXCEPTION.—Notwithstanding the limitation imposed by paragraph (2)(A)(ii) of this subsection, a final affirmative determination by the administering authority under section 705 or 735 of this Act may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 705 or 735 of this Act which is predicated upon the size of either the dumping margin or net subsidy determined to exist.

[(3)] *(4)* PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

* * * * * * *

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

Subtitle A—Imposition of Countervailing Duties

Sec. 701. Countervailing duties imposed.
Sec. 702. Procedures for initiating a countervailing duty investigation.
Sec. 703. Preliminary determinations.
Sec. 704. Termination or suspension of investigation.
Sec. 705. Final determinations.
Sec. 706. Assessment of duty.
Sec. 707. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty order.

Subtitle B—Imposition of Antidumping Duties

Sec. 731. Antidumping duties imposed.
Sec. 732. Procedures for initiating an antidumping duty investigation.
Sec. 733. Preliminary determinations.
Sec. 734. Termination or suspension of investigation.
Sec. 735. Final determinations.
Sec. 736. Assessment of duty.
Sec. 737. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order.
Sec. 738. Conditional payment of antidumping duty.
Sec. 739. Duties of customs officers.
Sec. 740. Antidumping duty treated as regular duty for drawback purposes.

[Subtitle C—Review of Determinations

[Sec. 751. Administrative review of determinations.]

Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

Sec. 751. Administrative review of determinations.

CHAPTER 2—NEGOTIATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

Sec. 761. Required negotiations.
Sec. 762. Required determinations.

Subtitle D—General Provisions

Sec. 771. Definitions; special rules.
Sec. 771A. Upstream subsidies and downstream dumping.
Sec. 772. United States price.
Sec. 773. Foreign market value.
Sec. 774. Hearings.
Sec. 775. Subsidy practices discovered during an investigation.
Sec. 776. Verification of information.
Sec. 777. Access to information.
Sec. 777A. Sampling and averaging.
Sec. 778. Interest on certain overpayments and underpayments.

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, *or sold (or likely to be sold) for importation,* into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise *or by reason of sales (or the likelihood of sales) of that merchandise for importation,* then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. *For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.*

* * * * * * *

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

[(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 703(b).]

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by

either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a).

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investiment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE [OR OFFSET] COMPLETELY A SUBSIDY OR TO CEASE EXPORTS OF SUBSIDIZED MERCHANDISE.—The administrating authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigative agree—

[(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or]

(1) to eliminate the subsidy completely with respect to that merchandise exported directly or indirectly to the United States on the date the investigation is suspended, or

[(2) to cease exports of that merchandise to the United States [within 6 months after the date on which] *on the date* the investigation is suspended.

* * * * * * *

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shalld not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii).

[(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.]

[(3) *(2)* REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warhouse, for consumption of merchandise covered by such agreement.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph [(C), (D), or (E)] *(C), (D), (E), and (F)* of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subpara-

graph [(C), (D), or (E)] *(C), (D), (E), and (F)* of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

* * * * * * *

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was an violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended, [and]

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

[(D)] *(E)* notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

* * * * * * *

SEC. 705. FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of its preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise.

(2) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, *or sales (or the likelihood of sales) for importation,* of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a).

Subtitle B—Imposition of Antidumping Duties

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise. *For purposes of this section and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.*

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

[(a) INITIATION BY ADMINISTERING AUTHORITY.—An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.]

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) CASES INVOLVING CERTAIN MERCHANDISE OF A KIND SUBJECT TO PREVIOUS DETERMINATIONS UNDER SECTION 735.—

(A) IN GENERAL.—If—

(i) within the 2-year period before the date on which a petition is filed under subsection (b), final affirma-

tive determinations were made under section 735 (a) and (b) regarding merchandise of the same class or kind as that covered by the petition (other than merchandise of that kind or class imported from the country to which the petition applies or from any additional supplier country); and

(ii) in that petition the petitioner also alleges that the elements necessary for the imposition of a duty under section 731 exist with respect to merchandise of that same class or kind being, or likely to be, imported from one or more additional supplier countries;

the administering authority shall decide, within 20 days after the date on which the petition is filed, whether information reasonably available to the petitioner in the petition, as well as such relevant information as may be available to the administering authority, regarding each additional supplier country is sufficient to commence a formal investigation under paragraph (1) regarding imports of merchandise of that class or kind from that country.

(B) ACTION AFTER DECISION.—If the decision of the administering authority under subparagraph (A) regarding an additional supplier country—

(i) is affirmative, a formal investigation shall be commenced under paragraph (1); or

(ii) is negative, the administering authority and the Commission shall monitor importations of merchandise of that class or kind from that country for such period of time (but not less than one year) as may be necessary for the administering authority to decide whether or not there is sufficient information to commence a formal investigation under paragraph (1) regarding that country, and if that decision is affirmative, the administering authority shall immediately commence such an investigation.

(C) DEFINITION.—For purposes of this paragraph, the term "additional supplier country" means a country—

(i) other than the country to which the petition referred to in subparagraph (A) applies; and

(ii) regarding which no investigation is currently pending under this subtitle with respect to imports from that country of the class or kind of merchandise covered by that petition.

(D) EXPEDITIOUS ACTION.—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation commenced on any petition referred to in subparagraph (A) or under subparagraph (B).

* * * * * * *

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

[(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition

by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 733(b).]

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 732(a).

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 733(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORTS OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States [within 6 months after the date on which] *on the date* the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the United States price of that merchandise.

* * * * * * *

[(d) ADDITIONAL RULES AND CONDITIONS.—

[(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

[(A) it is satisfied that suspension of the investigation is in the public interest, and

[(B) effective monitoring of the agreement by the United States is practicable.

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b)(1) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by the agreement exported to the United States during the period provided for cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.]

(d) ADDITIONAL RULES AND CONDITIONS.—The administering authority may not accept an agreement under subsection (b) or (c) unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

* * * * * * *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph [(C), (D), or (E)] *(C), (D), (E), and (F)* of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph [(C), (D), or (E)] *(C), (D), (E), and (F)* of section 771(9) may, by petition filed with the Commission and with notice to

the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733(d)(1) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended, [and]

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

[D] *(E)* notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

* * * * * * *

[Subtitle C—Review of Determinations]

Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, *if a request for such a review has been received and* after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of anti-

dumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

(b) REVIEWS UPON INFORMATION OR REQUEST.—

(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section [704 or 734], *704 (other than an a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 734 (other than a quantitative restriction agreement described in subsection (a)(2))* or an affirmative determination made under section 704(h)(2), 705(a), 705(b), 734(h)(2), 735(a)[, or 735(b),], *735(b), 762(a)(1), or 762(a)(2),* which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise.

* * * * * * *

CHAPTER 2—NEGOTIATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761. REQUIRED NEGOTIATIONS.

(a) IN GENERAL.—

(1) AGREEMENTS IN RESPONSES TO SUBSIDIES.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704(a)(2) or (c)(3), the President shall enter into negotiations with the government that is party to the agreement for purposes of—

(A) eliminating the subsidy completely, or

(B) reducing the net subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(2) AGREEMENTS IN RESPONSE TO DUMPING PRACTICES.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 734(a)(2), the President shall enter into negotiations with the government of the country from which was exported the merchandise that was the subject of the terminated investigation for purposes of—

(A) eliminating the dumping practice; or

(B) reducing the dumping margin to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) MODIFICATION OF AGREEMENTS ON BASIS OF NEGOTIATIONS.—The administering authority may not implement any modification to a quantitative restriction agreement resulting from negotiations entered into under subsection (a) unless before the first anniversary of the date on which the administering authority accepts the agreement the following occur:

(1) The President submits to the administering authority, and at the same time provides to those persons who were, or are, petitioners and interested parties in the related proceedings under subtitle A or B—

(A) a description of the proposed actions that the government concerned is willing to take in order to achieve the objectives referred to in subsection (a)(1)(A) or (B) or (2)(A) or (B), as the case may be; and

(B) the proposed modifications to the quantitative restrictions provided for in the agreement that the President believes are justified in response to the implementing of such actions.

(2) The administering authority, on the basis of the best information available to it, decides that the proposed actions referred to in paragraph (1)(A) will either—

(A) eliminate completely the subsidy or dumping practice; or

(B) reduce the net subsidy or dumping margin.

(3) If the decision of the administering authority under paragraph (2)(B) is affirmative, the Commission, on the basis of the best information available to it, decides that the proposed actions and the proposed modifications referred to in paragraph (1) are likely to eliminate completely the injurious effect of exports to the United States of the merchandise.

(4) The administering authority invites the comment of those persons referred to in paragraph (1) regarding the proposed actions and modifications and takes into account all such comment that is timely submitted.

(5) The administering authority is satisfied that the government concerned has implemented the actions referred to in subsection (a)(1)(A) or (B) or (2)(A) or (B), as the case may be, that it proposed to take.

(c) SPECIAL RULE REGARDING AGREEMENTS UNDER SECTION 704(c)(3).—This chapter shall cease to apply to a quantitative restriction agreement described in section 704(c)(3) at such time as that agreement ceases to have force and effect under section 704(f) or violation is found under section 704(i).

SEC. 762. REQUIRED DETERMINATIONS.

(a) IN GENERAL.—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2, 704 (c)(3) (if suspension of the related investigation is still in effect, or 734(a)(2)—

(1) the administering authority shall determine—

(A) whether any subsidy is being provided with respect to the merchandise subject to the agreement and, if being so provided, the net subsidy, or

(B) whether the merchandise is being sold in the United States at less than fair value and, if being so sold, the margin of sales at less than fair value; and

(2) the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with

material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) DETERMINATIONS.—The determinations required to be made by the administering authority and the Commission under subsection (a) shall be made on the record, under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 705 or 735, as the case may be, for purposes of judicial review under section 516A. If the determinations by each are affirmative, the administering authority shall issue a countervailing duty order or antidumping duty order under section 706 or 736 effective with respect to merchandise entered on and after the date on which the agreement terminates.

(c) HEARINGS.—The determination proceedings required to be prescribed under subsection (b) shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 774 on the issues involved.

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—* * *

* * * * * * *

[(5) SUBSIDY.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

[(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

[(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

[(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

[(ii) The provision of goods or services at preferential rates.

[(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

[(iv) The assumption of any costs or expenses of manufacture, production, or distribution.]

(5) SUBSIDY.—

(A) IN GENERAL.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

(i) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(I) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(II) The provision of goods or services at preferential rates.

(III) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(IV) The assumption of any costs or expenses of manufacture, production, or distribution.

(iii) Any export targeting subsidy described in subparagraph (B).

(iv) Any natural resource subsidy described in subparagraph (C).

(v) Any upstream subsidy determined under section 771A.

(B) EXPORT TARGETING SUBSIDY.—

(i) IN GENERAL.—The term "export targeting subsidy" means any government plan or scheme consisting of coordinated actions, whether carried out severally or jointly or in combination with any other subsidy under subparagraph (A), that are bestowed on a specific enterprise, industry, or group thereof (hereinafter in this paragraph referred to as a "beneficiary") of a kind referred to in subparagraph (A)(ii) and the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise. The actions referred to in the preceding sentence include, but are not limited to, the following:

(I) The exercise of government control over banks and other financial institutions that requires the diversion of private capital on preferential terms to specific beneficiaries or into specific sectors.

(II) Extensive government involvement in promoting or encouraging anticompetitive behavior among specific beneficiaries; including the providing of assistance in planning and establishing joint ventures which have an anticompetitive export effect, the relaxation of antitrust rules normally applied to beneficiaries to assure the development of anticompetitive export cartels, the providing of assistance in planning or coordinating joint research and development among selected beneficiaries to promote export competitiveness,

and regulating the division of markets or allocation of products among selected beneficiaries.

(III) Special protection of the home market that permits the development of competitive exports in a specific sector or product.

(IV) Special restrictions on technology transfer or government procurement that limit competition in a specific sector or beneficary and thereby promote export competitiveness.

(V) The use of investment restrictions, including domestic content and export performance requirements, that limit competition in a specific sector or beneficiary and thereby promote export competitiveness.

(ii) DETERMINATION OF LEVEL OF EXPORT TARGETING SUBSIDY.—In determining the level of an export targeting subsidy, the administering authority shall utilize a method of calculation which, in its judgment and to the extent possible, reflects the full benefit of the subsidy to the beneficiary over the period during which the subsidy has an effect, rather than the cash cost of the subsidy to the government.

(C) NATURAL RESOURCE SUBSIDY.—

(i) IN GENERAL.—A natural resource subsidy exists if a natural resource product is provided or sold within a country (hereinafter referred to as the "exporting country") by a government-regulated or controlled entity, for use (directly or indirectly) in the manufacture or production of any class or kind of merchandise in the exporting country, at a domestic price that, by reason of such regulation or control—

(I) is lower than the export price or fair market value (whichever is appropriate) of the product in the exporting country, and

(II) is not freely available to United States producers for purchase of that product for export to the United States,

and that product would, if sold at the export price or fair market value (whichever is appropriate), constitute a significant portion of the total cost of the manufacture or production of such merchandise.

(ii) LEVEL OF NATURAL RESOURCE SUBSIDY.—The level of a natural resource subsidy is the difference between the domestic price of the natural resource product and the export price of that product; except that if—

(I) there are no exports of that product, or

(II) the export price of that product is distorted by being either significantly higher or lower than market prices in the relevant market by reason of quotas or other government manipulation,

the level of the natural resource subidy is the difference between that domestic price and the fair market value of that product.

(iii) DETERMINATION OF FAIR MARKET VALUE.—For purposes of this subparagraph, the term "fair market value" means the price that a willing buyer would pay a willing seller for a natural resource product in an arms-length transaction in the absence of government regulation. In determining the fair market value, the administering authority shall take into account—

(I) the prices at which the product is generally available in world markets, and

(II) the market clearing price or the average United States price, whichever is appropriate, at which the product is generally available to United States producers, and

shall also take into account the extent, if any, to which—

(III) a comparative advantage of the exporting country in relation to other sellers (for example, any cost savings resulting from such factors as the availability of abundant supplies, lower production costs, or lower transportation costs), and

(IV) the availability or lack of access to export markets,

would result in a different market price in the exporting country in the absence of government regulation.

* * * * * * *

(7) MATERIAL INJURY.—

(A) IN GENERAL.—* * *

* * * * * * *

(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if—

(I) the marketing of such imports in the United States is reasonably coincident, and

(II) there is a reasonable indication that such imports will have a contributing effect in causing, or threatening to cause, material injury to the industry.

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

[(E) SPECIAL RULES.—For purposes of this paragraph—

[(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

[(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.]

(E) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commissior of material injury.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether there is a threat of material injury, the Commission shall consider, among other relevant economic factors—

(I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly

as to whether the subsidy is an export subsidy inconsistent with the Agreement), and

(II) whether there is, based on any demonstrable adverse trend regarding the merchandise concerned (such as an increase in production capacity in the exporting country likely to result in a significant increase in exports thereof to the United States, a rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level, the likelihood that imports will enter at prices that will have a depressing or suppressing effect on domestic prices, or a substantial increase in inventories in the United States), a probability that the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury.

A determination may not be made on the basis of mere supposition or conjecture, and sufficient information must exist for concluding that the threat of injury is real and that actual injury is imminent.

(ii) IF EXPORT TARGETING SUBSIDIES INVOLVED.—In determining under clause (i) whether there is a threat of material injury by reason of an export targeting subsidy, the Commission shall consider—

(I) the effect of the practices constituting the subsidy on the export competitiveness of the beneficiary of the subsidy, and

(II) the extent to which such practices are likely to have a demonstrable adverse effect on the industry with regard to costs and availability of capital, outlays for research and development, and future investment.

* * * * * * *

(9) INTERESTED PARTY.—The term "interested party" means—

(A) a foreign manufacture, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, [and]

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States[.]*; and*

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product.

* * * * * * *

SEC. 771A. UPSTREAM SUBSIDIES AND DOWNSTREAM DUMPING.

(a) UPSTREAM SUBSIDIES.—

(1) DEFINITION.—The term "upstream subsidy" means any action of a kind described or referred to in section 771(5)(A), (i), (ii), (iii), or (vi) by the government of a country that—

(A) is paid or bestowed by that government with respect to a product that is used in the manufacture or production in that country of merchandise which is the subject of an investigation under subtitile A or B,

(B) results in a price for the product for such use that is lower than the generally available price of the product in that country, and

(C) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this definition, an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country.

(2) ADJUSTMENT OF GENERALLY AVAILABLE PRICE IN CERTAIN CIRCUMSTANCES.—If the administering authority decides that the generally available price for a product in the country of the manufacture, production, or export of the merchandise under investigation is artifically depressed by reason of any subsidy, or because of sales thereof in such country at less than fair value, the administering authority shall adjust such generally available price so as to offset such depression before applying paragraph (1)(B).

(3) INCLUSION OF AMOUNT OF SUBSIDY.—If the administering authority decides, during the course of an investigation under subtitle A or B, that an upstream subsidy is being or has been paid or bestowed regarding the merchandise under investigation, the administering authority shall include in the amount of any countervailing duty or dumping duty imposed under that subtitle on the merchandise an amount equal to the difference between the prices referred to in paragraph (1)(B), adjusted, if appropriate, for artificial depression.

(b) DOWNSTREAM DUMPING.—

(1) DEFINITION.—Downstream dumping occurs when—

(A) a product that is used in the manufacture or production of merchandise subject to investigation under subtitle A or B is purchased at a price that is below its foreign market value (as determined under subtitle B without regard to this subsection),

(B) that purchase price—

(i) is lower than the generally available price of the product in the country of manufacture or production, or

(ii) if the generally available price of the product in the country of manufacture or production is artifically

depressed by reason of any subsidy or other sales at below foreign market value, is lower than the price at which the product would be generally available in such country but for such depression, and

(C) the difference between the foreign market value and such purchase price has a significant effect on the cost of manufacturing or producing the merchandise under investigation.

(2) INCLUSION OF AMOUNT ATTRIBUTABLE TO DOWNSTREAM DUMPING.—If the administering authority decides, during the course of an investigation under subtitle A or B, that downstream dumping is occurring, or has occurred, with respect to any product used in the manufacture or production of the merchandise under investigation, the administering authority, in calculating the amount of any countervailing duty or antidumping duty on such merchandise, shall include an amount equal to the difference between—

(A) the price referred to in paragraph (1)(A) at which the product was purchased, and

(B) either—

(i) the generally available price, referred to in paragraph (1)(B)(i), of the product, or

(ii) the price, referred to in paragraph (1)(B)(ii), of the product that would pertain but for artificial depression,

whichever is appropriate.

(c) SCOPE OF INQUIRY BY ADMINISTERING AUTHORITY.—The administering authority is not required, in undertaking an investigation under subtitle A or B, to inquire regarding the presence of an upstream subsidy, or of downstream dumping, beyond that stage in the manufacture or production of the class or kind of merchandise that immediately precedes the final manufacturing or production stage before export to the United States, unless reasonably available information indicates that such a subsidy is being or has been paid or bestowed, or such dumping is occurring or has occurred, before such immediately preceding stage and is having or has had a substantial effect on the price of the merchandise.

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SEC. 773. FOREIGN MARKET VALUE.

(a) DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—* * *

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[(f) AUTHORITY TO USE SAMPLING TECHNIQUES AND TO DISREGAD INSIGNIFICANT ADJUSTMENTS.—For the purpose of determining foreign market value under this section, the administering authority may—

[(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.]

SEC. 774. HEARINGS.

[(a) INVESTIGATION HEARINGS.—The administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.]

(a) INVESTIGATION HEARINGS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705, 735, or 762(b).

(2) EXCEPTION.—If investigations are initiated under subtitle A and subtitle B regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that extraordinary circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

* * * * * * *

sec. 776. VERIFICATION OF INFORMATION.

[(a) GENERAL RULE.—Except with respect to information the verification of which is waived under section 733(b)(2), the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.]

(a) GENERAL RULE.—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation, and

(2) a revocation under section 751(c).

In publishing notice of any action referred to in paragraph (1) or (2), the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

* * * * * * *

SEC. 777. ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the li-

brary shall be made available to the public upon payment of the costs of preparing such copies.

(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of ex parte meetings between—

(A) interested parties or other persons providing factual information in connection with an investigation, and

(B) the person charged with making the determination, and any person charged with making a final recommendation to that person, in connection with that investigation.

The record of the ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NONCONFIDENTIAL SUBMISSIONS.—The administering authority and the Commission may disclose—

(A) any confidential information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as confidential by the person submitting it.

(b) CONFIDENTIAL INFORMATION.—

(1) CONFIDENTIALITY MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is [submitted)] *submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title)* without the consent of the person submitting it. [The administering authority and the Commission may require that information for which confidential treatment is requested be accompanied by a non-confidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention.] *The administering authority and the Commission shall require that information for which confidential treatment is requested be accompanied by—*

(A) a nonconfidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or a statement that the information is not susceptible to summary accompanied

by a statement of the reasons in support of the contention, and

(B) a statement permitting the administering authority to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or a statement that the information should not be released under administrative protective order.

* * * * * * *

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application, *before or after receipt of the information requested,* which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate *except that no distinction may be made between corporate counsel and retained counsel.* The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

SEC. 777A. SAMPLING AND AVERAGING.

(a) GENERAL RULE.—For the purpose of determing United States price or foreign market value under sections 772 and 773, and for purposes of carrying out annual reviews under section 751, the administering authority may—

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) SELECTION OF SAMPLES AND AVERAGES.—The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

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TITLE 28, UNITED STATES CODE

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

* * * * * * *

§ 2631. Persons entitled to commence a civil action

(a) * * *

* * * * * * *

(k) In this section—

(1) "interested party" has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

(2) "party-at-interest" means—

(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

(B) a manufacturer, producer, or wholesaler in the United States of a like product;

(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, [and]

(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States[.]; *and*

(E) an association composed of members who represent parties-at-interest described in subparagraph (B), (C), or (D).".

* * * * * * *

§ 2636. Time for commencement of action

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

[(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determina-

tion under section 703(b), 703(c), 733(b) or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the Publication of such determination in the Federal Register.

[(d)(1) A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

[(2) A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.]

(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

[(e)] *(d)* A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

[(f)] *(e)* A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

[(g)] *(f)* A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

[(h)] *(g)* A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

[(i)] *(h)* A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

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[§ 2647. Precedence of cases

[The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

[(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

[(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B)(i) or (ii) of the Tariff Act of 1930.

[(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

[(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.**]**

§ 2647. Precedence of cases

The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the Court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

(2) Second, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

(3) Third, a civil action commenced under section 516 or 516A of the Tariff Act of 1930.

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ADDITIONAL VIEWS

When first introduced, H.R. 4847 contained a provision that would simplify the criteria under which dumping by non-market economies would be determined. The provision would have replaced the complex existing procedures whereby prices in a non-market, or communist, country are compared to prices in a market country with a similar level of economic development. The so-called "surrogate country" test is considered by the Administration, the private sector and many in the Congress to be unpredictable and confusing. In the past, it has not provided an effective remedy against dumping by a non-market economy.

The changes in the law included in the bill as introduced would have established a pricebreak test to determine whether dumping was occurring. Under the new provisions, the administering authority would determine the fair market value of merchandise exported to the United States on the basis of the "lowest free market price" of like articles sold in this country if that price were a competitive free market price. The new test would be an alternative to the "surrogate country" test in current law and would provide a more readily apparent benchmark of whether dumping exists, prior to a determination of whether such dumping is the cause of material injury to a U.S. industry.

The lowest free-market price would be defined as the lowest average price, adjusted to disregard the lowest 10 percent of the average, charged by all U.S. producers and other market economy countries for like articles in the U.S. market. This price would be adjusted to take into account any price-depressing effect of imports of the dumped merchandise by the non-market economy country as well as for differences in quantity, level of trade, duties or other factors required to ensure comparability. Also, the benchmark price must be a competitive free market price and could not be used if there were only a very few producers in the market who could effectively control prices. Finally, prices offered by free market producers which have been the subject of a preliminary or final dumping or subsidy determination would be excluded.

The administering authority could continue to use the present "surrogate country" test if it determined that the lowest free-market price is not a competitive price by virtue of a limited number of free market suppliers of the merchandise in the U.S. market. The surrogate country test would remain available as an option in other circumstances, if a truly comparable surrogate country exists. This would allow those who have been satisfied with how existing law has worked in particular instances a chance to argue, on a case-by-case basis, that a surrogate country test would provide more adequate relief.

The provision on non-market economy pricing was dropped from the bill when arguments arose over whether the pricebreak should

be the lowest free market price as described above or some other price test. Some suggested a higher threshold, such as the average free market price, should be used instead. Two requirements must be met before dumping can be proven and acted against. One is that below fair market value pricing is occurring, and secondly is that such activity is causing material injury. Without a determination of injury, dumping is only "technical" and cannot be offset under GATT rules or under U.S. law. Setting the average U.S. price as the threshold presumes that if a non-market country prices above the level of half the sellers in the U.S., any dumping that exists would be injurious. It is unlikely that this would be the case, and the uncertainty of existing law would not be resolved.

This is another example of an attempt to simplify and clarify existing law, and to make our trade laws work to address legitimate problems that became entangled in protectionist solutions. Other sectors of the U.S. economy, of course, have to pay for such protectionism. The result we have seen in H.R. 4784 is that amendments are approved that further complicate the trade statutes, violate our international obligations and threaten our export industries—or efforts to resolve a problem, such as non-market economy pricing, are dropped altogether.

We support the provisions as originally included in H.R. 4784. They are fair and, with the 10 percent exclusion, prevent very low wage countries from distorting the lowest free market price. We hope that at a later time, either in separate legislation or in H.R. 4784, should the problems with the bill be resolved and it gain wider support, a simplification of existing rules with respect to non-market economy pricing can be achieved.

BILL ARCHER.
BILL GRADISON.
BARBER B. CONABLE.
BILL FRENZEL.

DISSENTING VIEWS

When the process of developing this legislation began, we had hoped to support needed changes in the countervailing duty and dumping laws that would address new problems in a changing marketplace and would simplify and lessen the expense of seeking relief under these laws. Our goal also was that these changes be consistent with the GATT and the international obligations of the U.S. so as not to jeopardize important exporting interests or to undermine this country's trade policy objectives. We find we cannot support H.R. 4784 as reported. The goals we sought initially have been compromised by provisions that further complicate the statutes and erode their effectiveness. Also, the guidelines of adherence to the letter and the spirit of the GATT, strongly espoused in the beginning, have not been met. The Administration also strongly opposes H.R. 4784.

H.R. 4784 began out of a growing concern on the part of U.S. industry, shared by the Administration and many in the Congress, that U.S. trade laws were too cumbersome and costly and did not adequately address new forms of government intervention in the marketplace. These deficiencies in the law created a hardship for many U.S. businesses that were hit by unfair import competition yet were deterred from using expensive and uncertain statutory procedures. However, the reformers recognized trade as a growing part of this country's GNP with important export interests that also needed to be protected. Therefore, we should avoid developing rules and procedures that we would not want applied to our own firms, and we should not depart from the benefits and obligations already agreed to under the GATT. In our view H.R. 4784, although making some procedural improvements in the CVD and dumping laws, is weighted down with additional complicated and arbitrary definitions and procedures that endanger our exporting interests and render the law less effective. Our specific objections are outlined below.

TARGETING

The provisions of the bill that define targeting as an illegal practice, and were designed to cover newer forms of subsidization, have become the weak link of the bill. A panoply of government practices will be labeled "targeting", making the definition so broad that it covers legitimate forms of government behavior, including many programs of the U.S. government. The provisions are inconsistent with the GATT and the Subsidies Code and represent a unilateral departure by the U.S. from its international obligations. Rather than providing additional protection for U.S. firms against unfair practices, these provisions will subject U.S. industries to retaliation either directly through GATT challenges to our law or in-

directly through the implementation of "mirror" legislation abroad. The jerrymandered nature of the targeting definition, coupled with the complicated and subjective method of calculating the offsetting duty, can only lead to endless court challenges and greater uncertainty in our trade laws.

H.R. 4784 defines targeting as "any government plan or scheme consisting of coordinated actions . . . the effect of which is to assist the beneficiary to become more effective in the export of any class or kind of merchandise." All illegal subsidies, whether existing singly or as part of a government "scheme or plan", can be countervailed under existing law. However, many legitimate government policies have the effect of benefiting export competitiveness yet would not be recognized as unfair subsidies under the GATT. Our space program, for example, has the effect of aiding U.S. exports of computers, semi-conductors, and satellites. Defense procurement has the effect of benefiting U.S. exports of aircraft and aerospace products. Many agriculture programs have the effect, but not the purpose, of aiding the competitiveness of U.S. agriculture exports. If these provisions were adopted by our trading partners, all of these industries could be subject to countervailing duties.

The goal of the targeting provisions was to address foreign government practices aimed at taking over or making substantial inroads in particular sectors of the U.S. market. As currently drafted, however, the purpose or design of government activity is ignored and the effect of the practices becomes the test. The risk to U.S. industries is compounded by the examples of targeting activity provided in the bill. Activity such as assistance to joint ventures, investment restrictions, research and development coordination and relaxation of antitrust rules are practiced by the U.S. yet we would not want them labeled as illegal subsidies. The U.S. administers various antitrust exemptions, such as those allowed export associations formed by U.S. firms under certain conditions. The Justice Department regularly grants antitrust exemptions to joint research and development ventures formed by U.S. companies. Several such R&D joint ventures were approved recently for the computer industry. With such broad definitions, and no regard for the purposes or design of the government activity, it is almost impossible to distinguish government practices that constitute "targeting" from those practices that do not.

Some of the practices defined as targeting, such as protection of home markets and domestic content and export performance requirements, clearly are not subsidies under the Subsidies Code and should not be addressed under the countervailing duty law. These practices may be illegal and inconsistent with the GATT, but there are separate mechanisms to address these problems. Indeed, the U.S. recently won a GATT case against Canadian domestic content and performance requirements. To unilaterally define certain practices as subsidies, and to countervail against them, violates the letter and the spirit of the GATT. The requirement in the bill that, in the case of targeting, the countervailing duty offset "the full benefit of the subsidy to the beneficiary over the period during which the subsidy has an effect" also contradicts the GATT. Article VI of the GATT clearly states that no countervailing duty be levied

"in excess of an amount equal to the estimated bounty or subsidy determined to have been granted . . ."

The separate standard for calculating a targeting subsidy (other subsidy practices require the net subsidy to be offset) implies that a higher margin of offset is merited for one kind of subsidy compared to others. Also, realistic methods of calculating the "full benefit of the subsidy" are not available. The Commercie Department has stated that it is not aware of any rational way to quantify the economic benefits of home market protection, antitrust exemptions, or restrictions on foreign investments, especially when these practices are integrated into broad domestic policies and occur in different market conditions. The problem is compounded because the law requires that the subsidy be allocated to the price of the imported products. In the judgment of the Commerce Department, it would be impossible to quantify the price advantage of so-called targeting practices in a fair, consistent and realistic manner. Determinations would be inherently speculative and arbitrary, leading to increased legal challenges. This further uncertainty is wholly contrary to the original purposes of the bill.

NATURAL RESOURCES

The natural resources provisions of H.R. 4784 represent a major departure from longstanding U.S. and international practice regarding the definition of a subsidy and ignores the clear recognition in the GATT that some subsidies can be used legitimately by governments "to promote important objectives of social and economic policy". The provision defines a natural resource subsidy as the difference between the domestic price and the export price or the fair market value, if the export price is distorted. In effect, the provision defines as a subsidy the comparative advantage certain countries have in natural gas, petroleum and other natural resources. The provisions cannot be defended under the GATT, and would put U.S. export industries at risk of retaliation. Without export controls, the energy resources of energy rich countries would be drained. Even the U.S., an energy poor country, licenses its natural gas and petroleum imports and, to a certain degree, controls such exports. Control of domestic prices has long been used by some governments in order to assure public benefit from either abundant or limited supplies of natural resources.

Under U.S. law, and international practice, only subsidies that give a special advantage to "a specific enterprise or industry, or group of enterprises of industries" would be considered an illegal practice. This concept is an important one in the world trading community and the U.S. should not abandon it unilaterally. Since all governments undertake numerous measures which alter economic conditions, it has become a fundamental principle of international and U.S. law that government programs which are generally available—such as irrigation projects, high quality transportation systems, investment tax credits, capital cost recovery allowances, rural electrification programs and employee benefit programs—are not considered to be illegal subsidies under the GATT even though such activities could be said to benefit companies by indirectly lowering their cost of production. The U.S. courts have confirmed this

by ruling that defining generally available benefits as a bounty or grant would "lead to an absurd result".

If our trading partners follow our lead and enact similar natural resource provisions, the U.S. has much to lose besides the principles of comparative advantage and general availability. In practical terms, U.S. industries benefit from government energy policies. The U.S. continues to regulate natural gas, and the European Community has argued that textiles exported to Europe benefit from lower U.S. natural gas prices. U.S. textiles and petrochemicals, which benefit from natural gas controls, would become potential targets for foreign countervailing duties. Other U.S. industries benefit from government control of natural resources: Western agriculture products benefit from government irrigation projects, while industries in the Tennessee Valley and the Pacific Northwest benefit from government electricity. In addition, U.S. petrochemical firms have significant investment in foreign countries with abundant hydrocarbon natural resources. These firms would be severely damaged if denied access in the future to the U.S. market based on arbitrary and discriminatory subsidy criteria. Also, U.S. farmers would be deprived of lower cost imported fertilizer.

Much discussion has centered on the "unfair" domestic price for Canadian and Mexican natural gas and petroleum when compared to the higher export price set by these countries and higher prices in the U.S. In fact, the U.S. has contributed significantly to the establishment of these export prices, and prices in the U.S. for natural gas vary widely. Other factors, such as termination of low-priced contracts, location in market areas easily accessible to imports, or government programs such as the PIK (payment-in-kind) agriculture program, have effected the competitiveness of natural gas users in the U.S. rather than any unfair trade practice abroad. Past U.S. policies, and those of Canada and Mexico, should show the degree to which the export price, or even a controlled domestic price, is separate from any domestic subsidy that may be given to users of the natural resource. Accepting the natural resource provision in H.R. 4784 places our own exports at risk, makes certain U.S. government practices with respect to natural resources inconsistent with U.S. trade laws and penalizes a specific class of U.S. investments abroad.

DOWNSTREAM DUMPING

The provisions on downstream dumping in H.R. 4784 clearly are GATT illegal, although proponents of the bill have pledged to adhere to the letter and the spirit of the GATT and of our international obligations. Article VI of the GATT defines dumping in specific terms as sales at less than normal value of a like product. The product is dumped if sold at less than fair value, whether or not it can be attributed to a below cost component; likewise, a product is not dumped if it is sold at or above the fair market value, whether or not its components are below cost or are subsidized. Applying a dumping test to components of a product that is the subject of a separate dumping or subsidy complaint clearly violates the "like product" requirement. Article VI also prohibits subjecting imports to both countervailing and dumping duties to compensate for the

same situation. Although the dumping margin is translated to a subsidy calculation under the bill, in fact the product is subjected to double jeopardy prohibited by Article VI.

The downstream dumping provisions would be impossible to administer in practice in a fair and realistic way. Simultaneous investigations of allegedly dumped materials and components would have to be conducted during the dumping or subsidy investigation associated with the initial complaint. The effect would be to introduce additional complexity and uncertainty to investigations already subject to stringent statutory time limits. A dumping case is an allegation by one firm against the pricing practices of another firm. A third firm supplying components would not be liable for antidumping duties and would have no incentive to provide information on its own practices. The problem becomes overwhelming if the component company is located in a third country. It will be impossible to avoid highly arbitrary calculations that have no basis in economic reality. Again, we are moving backwards in our effort to simplify the law, avoid costly litigation and provide some degree of certainty as to what unfair practices are and what remedy is likely to result from our trade laws.

MONITORING IMPORTS

Section 104 requires both the Commerce Department and the International Trade Commission to monitor imports of a product from several different countries where injury to the domestic industry from dumping practices of one country has been established within the previous two years. If a firm alleges that dumping is occurring from any other country that supplies the product, although the allegation will not have been substantiated by an investigation, then two agencies must devote their resources to monitoring the product's price, foreign market value, and level of growth of imports. The only other choice the Administration has is to self-initiate a dumping investigation. Although there is an initial time limit on monitoring activity of one year in each case, any number of further requests can occur within a two year period and there is no mechanism for the Administration to distinguish between frivolous and justifiable complaints.

There currently are more than 90 dumping orders in effect covering about 80 separate products. This provision could result in a tremendous administrative burden on two agencies that would perform the duplicative task of monitoring a host of different products from a variety of countries for differing periods of time. The trade dampening effect of such activity is obvious. Although the problem of simultaneous dumping may be a legitimate one, section 104 provides no reasonable solution. Furthermore, neither the GATT nor U.S. trade law provides a presumption of guilt on the part of one country because another country has been found to be dumping. This section leans heavily in that direction. A web of bureaucratic activity will be created with very little apparent benefit. Such pervasive monitoring will have a chilling effect on trade, but U.S. firms will still have to develop their case and prove injury (even though the government selfinitiates) before relief can be granted. This section merely adds to the confusion of our trade laws.

CUMULATION AND THREAT OF INJURY

Under existing law, the ITC cumulates imports from two or more countries in an injury investigation, on a case by case basis, if there is a reasonable indication that imports from each country have contributed to the injury. Initially the bill intended to reaffirm the existing practice of several Commissioners, and to put the requirement in the statute so that all Commissioners would behave consistently. However, an amendment was agreed to in Committee that would require cumulation of imports that compete with each other or with the like product in the U.S. regardless of the contributory effect with respect to injury or the proximity in time of the imports. This is inconsistent with GATT requirements that subsidized or dumped products be injurious. The provision of the bill creates a false injury by lumping imports together regardless of whether there is any indication imports from a particular country are contributing to the injury, and penalizes countries that have a low volume of imports to our market.

The bill provides separate criteria for threat of material injury in the case of "targeting" subsidies. This again suggests that targeting subsidies, as opposed to other forms of subsidies, should result in a greater or more easily obtained remedy. Basing threat of injury on the mere effect of a practice on an industry's export competitiveness or on an early prediction of the effect of a practice on "costs and availability of capital, outlays for research and development, and future investment" is highly speculative. Such predictions would have to occur prior to knowing whether a practice can even be defined as an illegal subsidy practice, let alone whether any future benefit would constitute a threat of injury. Improving export competitiveness or competitiveness in general is not illegal under the GATT. The separate threat provisions would invite determinations that are purely specultive rather than real and imminent, and would be contrary to GATT requirements that injury or threat thereof be real and identifiable.

SUMMARY

The problems with the bill outlined above make HR 4784 far different from the expected legislation designed to simplify and improve the effectiveness of our countervailing duty laws. The bill also is not consistent with the letter and spirit of the GATT and therefore, leaves our export industries vulnerable to retaliation or equally faulty "mirror" legislation. The goal of achieving needed changes in our trade laws should not be reached at the expense of other important U.S. trade and economic interests or by setting aside, even partially, our international obligations. The Administration strongly opposes this legislation as well. We urge our colleagues to join us in opposing HR 4784.

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